United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

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76-7108

United States Court of Appeals

For the Second Circuit

B
P/S

Docket No. 76-7108

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

and

CHARLES LONG, *et al.*, individually, etc.,

Appellees,

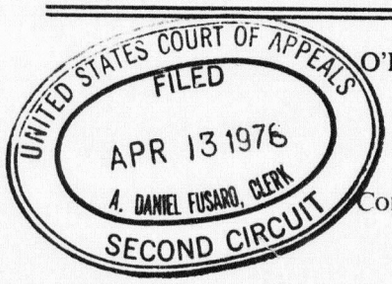
v.

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, *et al.*,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX



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INDEX

	PAGE
Docket Entries	1a
Complaint (Breach of Contract)	5a
Notice of Motion for Preliminary Injunction	24a
Affidavit of John R. Alfarone in Support of Motion for Preliminary Injunction	27a
Notice of Motion of Defendant OPCMIA and Defendant Local 60, OPCMIA to Dismiss Complaint	39a
Affidavit of James J. Boyle in Support of Motion to Dismiss Complaint, etc.	42a
Exhibit 1 Annexed to Affidavit of James J. Boyle	54a
Exhibit 2 Annexed to Affidavit of James J. Boyle	59a
Exhibit 3 Annexed to Affidavit of James J. Boyle	75a
Exhibit 4 Annexed to Affidavit of James J. Boyle	77a
Exhibit 5 Annexed to Affidavit of James J. Boyle	79a
Exhibit 6 Annexed to Affidavit of James J. Boyle	83a
Exhibit 7 Annexed to Affidavit of James J. Boyle	85a
Exhibit 8 Annexed to Affidavit of James J. Boyle	87a
Exhibit 9 Annexed to Affidavit of James J. Boyle	89a
Exhibit 10 Annexed to Affidavit of James J. Boyle	91a
Exhibit 11 Annexed to Affidavit of James J. Boyle	97a
Exhibit 12 Annexed to Affidavit of James J. Boyle	100a
Exhibit 13 Annexed to Affidavit of James J. Boyle	102a

PAGE

Exhibit 14 Annexed to Affidavit of James J. Boyle 105a

Exhibit 15 Annexed to Affidavit of James J. Boyle 110a

Exhibit 16 Annexed to Affidavit of James J. Boyle 113a

Exhibit 17 Annexed to Affidavit of James J. Boyle 118a

Affidavit of Michael Canuso in Opposition to Motion for a Preliminary Injunction and other and Alternative Relief 121a

Exhibit 1 Annexed to Affidavit of Michael Canuso 128a

Affidavit of H. Earl Fullilove in Support of Motion to Dismiss, etc. 163a

Affidavit of James J. Shay in Support of Motion for Preliminary Injunction 168a

Exhibit A Annexed to Affidavit of James J. Shay 185a

Exhibit B Annexed to Affidavit of James J. Shay 193a

Exhibit C Annexed to Affidavit of James J. Shay 195a

Exhibit D Annexed to Affidavit of James J. Shay 197a

Exhibit E Annexed to Affidavit of James J. Shay 199a

Exhibit F Annexed to Affidavit of James J. Shay 201a

Exhibit G Annexed to Affidavit of James J. Shay 203a

PAGE

Exhibit H Annexed to Affidavit of James J. Shay 205a

Exhibit I Annexed to Affidavit of James J. Shay 207a

Exhibit J Annexed to Affidavit of James J. Shay 209a

Exhibit K Annexed to Affidavit of James J. Shay 211a

Exhibit L Annexed to Affidavit of James J. Shay 213a

Exhibit M Annexed to Affidavit of James J. Shay 216a

Exhibit N Annexed to Affidavit of James J. Shay 220a

Exhibit O Annexed to Affidavit of James J. Shay 222a

Exhibit P Annexed to Affidavit of James J. Shay 224a

Exhibit Q Annexed to Affidavit of James J. Shay 226a

Exhibit R Annexed to Affidavit of James J. Shay 228a

Exhibit S Annexed to Affidavit of James J. Shay 230a

Exhibit T Annexed to Affidavit of James J. Shay 232a

Exhibit U Annexed to Affidavit of James J. Shay 236a

Exhibit V Annexed to Affidavit of James J. Shay 239a

PAGE

Exhibit W Annexed to Affidavit of James J. Shay 244a

Exhibit X Annexed to Affidavit of James J. Shay 251a

Exhibit Y Annexed to Affidavit of James J. Shay 259a

Supplemental Affidavit of James J. Boyle in Support of Motion to Dismiss, etc. 264a

Exhibit 18 Annexed to Supplemental Affidavit of James J. Boyle 273a

Exhibit 19 Annexed to Supplemental Affidavit of James J. Boyle 275a

Exhibit 20 Annexed to Supplemental Affidavit of James J. Boyle 277a

Exhibit 21 Annexed to Supplemental Affidavit of James J. Boyle 285a

Exhibit 22 Annexed to Supplemental Affidavit of James J. Boyle 288a

Exhibit 23 Annexed to Supplemental Affidavit of James J. Boyle 292a

Exhibit 24 Annexed to Supplemental Affidavit of James J. Boyle 296a

Opinion of Metzner, D.J. dated November 5, 1975 .. 299a

Plaintiffs Notice of Motion for Preliminary Injunction Filed January 26, 1976 ..... 311a

Affidavit of John Alfarone in Support of Motion for Preliminary Injunction 314a

Affidavit of James J. Shay in Support of Motion for Preliminary Injunction 320a

PAGE

Exhibit A Annexed to Affidavit of James J. Shay 323a

Exhibit B Annexed to Affidavit of James J. Shay 325a

Affidavit of James J. Boyle dated January 21, 1976 328a

Exhibit Attached to Affidavit of James J. Boyle dated January 21, 1976 ..... 333a

Exhibit Attached to Boyle Affidavit dated January 21, 1976 ..... 335a

Notice of Motion of Defendant OPCMIA and Defendant Local 60 for Summary Judgment 341a

Affidavit of James J. Boyle in Support of Motion for Summary Judgment 344a

Exhibit A Annexed to Affidavit of James J. Boyle 356a

Exhibit B Annexed to Affidavit of James J. Boyle 365a

Affidavit of John Alfarone in Opposition to Motion for Summary Judgment 367a

Opinion of Metzner, U.S.D.J. Granting Motion for Preliminary Injunction dated March 5, 1976 ..... 370a

Order of Metzner, U.S.D.J. Granting Motion for Preliminary Injunction dated March 12, 1976 .... 377a

Docket Entries

2a

JUDGE MCLEAN

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

75 CIV. 4289

D. C. Form No. 106 Rev

208-1 75-4289 TITLE OF CASE 08-28-75 3 720 1 1

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,
and
CHARLES LONG, PASQUALE DE ROSA, ALBERT ZAPPY, HARRY EDWARDS AND ANTHONY DEL GAIS, each and all of them individually and on behalf of all other persons, members of Local 1974 working or seeking work as drywall tapers within the jurisdiction of such labor organizations, similarly situated

VS

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA

OPERATIVE PLASTERERS LOCAL 60, OPERATIVE PLASTERERS LOCAL 202

OPERATIVE PLASTERS LOCAL 852

0835 75-4289 ATTORNEYS

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Bronxville, NY 10708 776-5372

UNITED STATES COURT OF APPEALS FILED DEC 15 1975 SECOND CIRCUIT

STATISTICAL RECORD		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk				
J.S. 6 mailed	Marshal				
Basis of Action: injunctive relief; violation of contract between labor ganization	Docket fee				
Action arose at:	Witness fees				
	Depositions				

BEST COPY AVAILABLE

3a

75 Civ. 4239 DRYWALL TAPERS & POINTERS LOCAL 1974 ET AL vs. OPERATIVE PLASTERERS ET AL

JUDGE METZNER

METZNER, J.

75 CIV. 42

DATE	PROCEEDINGS	Date Order Judgment
08-28-75	-1- Filed complaint and issued summons.	
08-29-75	-2- Filed order appointing Frank Alfarone to serve the summons and complaint upon defts. Clerk	
09-03-75	-3- Filed pltf's affdvt. and notice of motion for a preliminary injunction ret. 8-9-75	
09-03-75	-4- Filed pltf's memorandum of law in support of above motion.	
09-03-75	-5- Filed summons and affdvt. of service: served on 8-29-75 Frank Rossetti, International Vice Pres. of deft. OPerative Plasterers (Internatio Michael Canuso, Pres. of deft. Local 852 and International Vice Pres. of deft. Operative Plasterers (Int'l) Carmine Marrotta, Business Representative of deft. Local 60.	
09-10-75	6) Filed stip. and order adj. pltf's motion to 9-16-75	
09-17-75	7) Filed memorandum of law in support of motion to dismiss and in opposition to motion for repl. inj. filed on behalf of deft. Opcmia and Local 60 of the Opcmia	
09-17-75	8) Filed on behalf of defts OPCMIA and LOCAL 60, OPCMIA affdvt. of James J. Boyle and notice of motion to dismiss the complaint for failure of plaintiffs to exhaust their inter-union administrative procedures before instituting suit. (exhibits 1 thru 17 attached to motion) -- no return date.	L&W
09-17-75	9) Filed on behalf of defendants Operative Plasterers Local 202 & Operative Plasterers Local 852 - affdvt. of Michael Canuso in opposition to motion for prel. inj.	
09-17-75	10) Filed notice of appearance by defendants Operative Plasterers Local 202 and Operative Plasterers Local 852	L&W
09-24-75	11) Filed plaintiff's affdvt. of James J. Shay.	
09-26-75	12) Filed notice of appearance by deft. Operative Plasterers Local 60	DCL
11-06-75	13) Filed OPINION #43346...Motion for prel. inj. and cross-motion by certain defts are denied, without prejudice to a renewal of them on a showing that the Plasterers are not cooperating or that the Building and Construction Trades Department refuses to follow its own published plan. So ordered. -- Metzner, J. m.n	
11-07-75	14) Filed supplemental memorandum of law in support of motion to dismiss and in opposition to motion for prel. inj. filed on behalf of defts OPCMIA and Local 60	
11-07-75	15) Filed supplemental affdvt. of James J. Boyle on behalf of defts.	
11-26-75	16) Filed transcript of record of proceedings, dated Oct. 3 1975	
12-03-75	17) Filed stip. and order ext. defts time to answer to 1-30-76. -- Metzner, J.	
01-26-76	18) Filed pltf's affdvt. and notice of motion for a preliminary injunction. - ret. 2-9-76	
01-26-76	19) Filed stip. and order ext. defts time to answer to 2-29-76. etc. Metzner, J.	
01-28-76	20) Filed defts affdvt. of James J. Boyle re motion to dismiss.	
02-09-76	21) Filed affdvt. and notice of motion of deft. OP&CMIA and deft. Local 60 for summary judgment. (no date)	
02-09-76	22) Filed deft. OP&CMIA and deft. Local 60's memorandum of law in support of motion for summary judgment and in opposition to motion for preliminary injunction.	
02-13-76	23) Filed pltfs. reply memorandum.	
02-17-76	24) Filed pltfs memorandum in opposition to defts' motion for summary judgment and plaintiffs' statement under Rule 9(g).	
02-17-76	25) Filed pltfs affdvt. of John Alfarone in opposition to defts' motion for summary judgment.	
02-26-76	26) Filed defts reply memorandum of law in support of motion for summary judgment and in opposition to motion for prel.inj.	
04-08-76	=== Filed memo endorsed on motion #21: This motion is denied = see opinion on motion for prel. injunction. So ordered. - Metzner, J. m/n	

DATE	PROCEEDINGS	Date Orde Judgment
3-08-76	Filed OPINION #44009...Plaintiffs motion for a preliminary injun ction is granted. The motions for summary judgment are denied. Defendants shall answer the complaint within 20 s of the date of this opinion. Settle order on notice - Metzner, J. m/n	
3-12-76	28) Filed Order that the Court granted preliminary injunction against defendants in its opinion #44009, pending final determination of this action and subject to plaintiffs' furnishing security in the amount of $25,000. Ordered that defendants comply with a certain memorandum, etc. and that defendants are enjoined as indicated herein. This order is stayed until March 17, 1976 pending application to the USCA for a further stay. -- Metzner, J.	
3-12-76	Filed defendants' Notice of Appeal from order of Judge Metzner on March 12-76, granting inter alia , a preliminary injunction against defendants, and denying defendants' motion for a summary judgment. m/n 3-12-76.	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By _____ Deputy Clerk

Complaint
(Breach of Contract)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG, PASQUALE DEROSA, ALBERT ZAPPY, HARRY EDWARDS and ANTHONY DEL GAIS, each of them individually and on behalf of all other persons, members of Local 1974 working or seeking work as drywall tapers within the jurisdiction of such labor orgainization, similarly situated,

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, OPERATIVE PLASTERERS LOCAL 60, OPERATIVE PLASTERERS LOCAL 202 and OPERATIVE PLASTERERS LOCAL 852,

Defendants

CLASS ACTION COMPLAINT

VERIFIED COMPLAINT

Plaintiffs, by their attorney, for their Complaint, allege that:

1. This suit is brought by plaintiffs as real parties in interest, and against defendants as real parties in interest, on the contract that is more fully described in paragraph 7 herein below, entered into on November 29, 1961 among defendant Operative Plasterers' and Cement Masons' International Association of the United States and Canada (hereinafter referred to as Operative Plasterers), the Brotherhood of Painters, Decorators and Paperhangers of America (presently known as the International Brotherhood of Painters and Allied Trades and herein-

after referred to as Painters), and the Bricklayers, Masons and Plasterers' International Union of America (hereinafter referred to as Bricklayers), which contract is hereinafter referred to as the 1961 Agreement. Jurisdiction is conferred upon this Court by Section 301(a) of the Labor-Management Relations Act of 1947 (hereinafter referred to as the LMRA), 29 U.S.C. Section 185 (a).

2. CLASS ACTION ALLEGATIONS. (a) This action is properly maintainable as a class action pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure. (b) There are approximately 1200 members of the class represented by the named plaintiffs CHARLES LONG, PASQUALE DEROSA, ALBERT ZAPPY, HARRY EDWARDS and ANTHONY DELGAIS. (c) The class represented consists of all members of plaintiff Drywall Tapers and Pointers of Greater New York, Local 1974, employed or seeking employment as drywall tapers within the jurisdiction of such local labor orgainiztion. (d) The claims of the named individual plaintiffs are typical of the claims of the class as a whole and there are no conflicts of interest among the class. (e) The questions of law and fact common to the class are the entitlement of members of the class, as employees directly affected and hence as real parties in interest, to effective enforcement of the provisions of the 1961 Agreement awarding jurisdiction over taping and pointing of drywall that is not to receive plaster, acoustical or imitation acoustical finish to Painters, and hence to Painters' subordinate body, Drywall Tapers and Pointers of Greater New York, Local 1974.

3. Painters, Operative Plasterers and Bricklayers are, and at all times herein mentioned have been, labor organizations representing employees in an industry affecting commerce as defined in the LMRA. Each of them is and at all times herein mentioned has been a national or international labor organization composed of various local labor organizations and/or other subordinate bodies and an unincorporate association of more than ten members. Defendant Operative Plasterers maintains its principal office at 1125 Seventeenth Street, N.W. Washington, D.C. 20036 in the City of Washington, District of Columbia. Painters maintains its principal office at 1750 New York Ave, N.W. in the City of Washington, District of Columbia.

4. Defendants OPERATIVE PLASTERERS LOCAL 60 (hereinafter Local 60), OPERATIVE PLASTERERS LOCAL 202 (hereinafter Local 202) and OPERATIVE PLASTERERS LOCAL 852 (hereinafter Local 852) are labor organizations representing employees in an industry affecting commerce as defined in the LMRA, and each of them is and at all times herein mentioned has been a local labor organization and subordinate body of defendant Operative Plasterers and an unincorporate association of more than ten members. Local 60 maintains its principal office at 80 East 11th Street, in the Borough of Manhattan, City, County and State of New York, within the geographical jurisdiction of this court; Local 202 maintains its principal office at 1407 Rockaway Parkway, in the Borough of Brooklyn, City and State of New York, County of Kings; and Local 852 maintains its principal office at a place within the State of New York presently unknown to plaintiff.

5. Plaintiff DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK , LOCAL 1974 (hereinafter referred to as Drywall Tapers) is now and at all times since January 1970 has been a labor organization representing employees in an industry affecting commerce within the meaning of the LMRA; and is now and at all times since January 1970 has been a local labor organization and subordinate body of Painters, duly chartered by Painters and assigned by Painters jurisdiction over all work involving taping or pointing of drywall performed within the five boroughs of the City of New York and certain portions of Nassau County. Drywall Tapers is and at all times since January 1970 has been an unincorporate association of more than ten members, and maintains its principal office at 37 Union Square West, in the Borough of Manhattan, City, County and State of New York, within the geographical jurisdiction of this Court.

6. Plaintiffs CHARLES LONG, PASQUALE DE ROSA, ALBERT ZAPPY, HARRY EDWARDS and ANTHONY DEL GAIS, are, and each of them is, a member of Drywall Tapers and a person employed or seeking employment as a drywall taper within the jurisdiction of Drywall Tapers.

7. On or about November 29, 1961, Operative Plasterers entered into a contract with Painters and with Bricklayers, which contract was set forth in a written document known as a Memorandum of Understanding and is referred to herein as the 1961 Agreement. It was agreed among the parties that the said 1961 Agreement supersedes any and all agreements and understandingsm either written or oral, which had been in use over the years, which pertain to the items of work outlined in the Memorandum of Understanding. The 1961 Agreement provided, and provides in relevant part as follows:

> "F. POINTING, TAPING AND TEXTURING ON DRYWALL SURFACES."
>
> " 1. All pointing and taping of drywall, regardless of material used, is Painters work, providing the drywall surfaces are not to receive plaster,acoustical or imitation acoustical finishes. The application of texturing to drywall surfaces is the work of Painters where paint material are used.
>
> 2. The application of plaster, acoustical or imitation acoustical finishes shall be the work of Plasterers, as well as the preparatory pointing and taping of drywall surfaces that are to receive these finishes."

8. The 1961 Agreement, and the part thereof quoted in paragraph 6 hereinabove, employ the words "Painters" and "Plasterers" to refer to the national or international labor organizations herein referred to respectively as Painters and Operative Plasterers.

The intent, meaning and purpose of the part of the agreement quoted in paragraph 6, so far as here relevant, is and at all times since the 1961 Agreement was entered into has been recognized and conceded by each of the parties thereto, to be, that all work involving pointing and taping of drywall, regardless of material used, where the drywall surfaces are not to receive plaster finish, or acoustical finish, or imitation acoustical finish, and in particular (though not exclusively) where they are to receive paint, shall be within the jurisdiction of Painters.

9. The 1961 Agreement is, and was intended by each of the parties thereto to be, binding upon all local labor organizations and other subordinate bodies of each of the parties to such 1961 Agreement. It has never been rescinded or abrogated or repudiated by any of the parties thereto, and remains in force and effect.

10. On July 31, 1974 the collective bargaining agreement theretofore in force between Drywall Tapers and the Metropolitan New York Drywall Contractors Association, Inc., an association of employers of drywall tapers (hereinafter referred to as Metropolitan), expired, and on August 1, 1974, a strike or work stoppage involving all drywall taping work of all employers who were members of Metropolitan, and of certain other employers, commenced. The said strike or work stoppage continued until October 7, 1974, on which day a new collective bargaining agreement was entered into between Drywall Tapers and Metropolitan.

August

11. In or abour Sa~~tember~~ 1974, while the aforesaid 12a strike or work stoppage was in effect, at a construction project at 31st Street and Seventh Avenue, in the Borough of Manhattan, City, County and State of New York, defendant Operative Plasterers and defendant Local 60, acting in concert and participation with each other and with Denart Construction Company, the drywall taping employer on such project, sent members of defendant Local 60 and/or other persons onto such project to perform drywall taping work which, prior to the strike or work stoppage, had been performed by members of Drywall Tapers which work involved taping and pointing of drywall to receive paint and was not to receive plaster finish, or acoustical finish, or imitation acoustical finish; and for several weeks thereafter defendant Operative Plasterers and defendant Lcoal 60 asserted jurisdiction over such work and bargaining rights over the persons performing it.

12. In or about late August 1974, while the aforesaid strike or work stoppage was in effect, at a construction project at Lakeville Road and Little Neck Parkway Glenn Oaks, New York in the county of Nassau and State of New York, defendant Operative Plasterers and defendant Local 852 acting in concert and participation with each other and with Prince Carpentry Incorporated, the drywall taping employer on such project, sent members of the defendant Local 852 and/or other persons onto such project to perform drywall taping work, which, prior to the strike or work stoppage, had been performed by members of Dry-Wall Tapers which work involved taping and pointing of drywall to receive paint and was not to receive plaster finish, or ac-

oustical finish, or imitation acoustical finish; and for several weeks thereafter defendant Operative Plasterers and defendant Local 852 asserted jurisdiction over such work and bargaining rights over the persons performing it. 13a

13. In or about September 1974, while the aforesaid strike or work stoppage was in effect, at a construction project at Park Lane North and South, Austin Street and Union Turnpike in the County of Queens and the State of New York, defendant Operative Plasterers and defendant Local 852 acting in concert and participation with each other and with A & M Wallboard Incorporated the drywall taping employer on such project, sent members of defendant local 852 and/or other persons onto such project to perform drywall taping work which, prior to the strike or work stoppage, had been performed by members of Drywall Tapers which work involved taping and the pointing of the drywall to receive paint and was not to receive plaster finish, or acoustical finish or imitation acoustical finish; and for several weeks thereafter defendant Operative Plasterers and local 852 asserted jurisdiction over such work and bargaining rights over the persons performing it.

14. In or about September 1974, while the aforesaid strike or work stoppage was in effect, at various construction projects located at 34th Street and Broadway, 40th Street and Broadway, 54th Street and Second Avenue, 67th Street and Seventh Avenue, and 68th Street and Broadway, in the Borough of Manhattan City, County and State of New York, defendant Operative Plasterers and defendant Local 60, acting in concert and participation with

each other and with Prince Carpentry Incorporated, the drywall taping employer on the abcve said projects, sent members of defendant Local 60 and/or other persons onto such projects, to perform drywall taping work which, prior to the strike or work stoppage, had been performed by members of Drywall Tapers which work involved taping and pointing of drywall to receive paint and was not to receive plaster finish, or acoustical finish, or imitation acoustical finish; and for several weeks thereafter defendant Operative Plasterers and Local 60 asserted over such work and bargaining rights over the persons performing it.

15. In or about September 1974, while the aforesaid strike or work stoppage was in effect, at an office Complex at 600 Third Avenue in the Borough of Manhattan, City, County and State of New York, defendant Operative Plasterers and Local 60, acting in concert and participation with each other and with Prince Carpentry Incorporated, the drywall taping employer on such project, sent members of defendant local 60 and/or other persons onto such project to perform drywall taping work which, prior to the strike or work stoppage, had been performed by members of Drywall Tapers which work involved taping and pointing of drywall to receive paint and was not to receive plaster finish, or acoustical finish, or imitation acoustical finish; and for several weeks thereafter defendant Operative Plasterers and defendant local 60 asserted jurisdiction over such work and bargaining rights over the persons performing it.

16. Each of the employers named or described in paragraphs 11, 12, 13, 14, and 15, hereinabove is, and at all times here

in mentioned has been a member of Metropolitan; and the recognized or certified exclusive representative of all drywall taping employees employed by each such employer is, and at the time specified was, Drywall Tapers; and at the time specified the drywall taping employees of each said employer were on strike.

16A Prior to the Commencement of the strike or work stoppage aforesaid on August 1, 1974, neither defendant Operative Plasterers, nor defendant Local 60, nor defendant Local 202 nor defendant Local 852 had or had ever had any collective bargaining agreement or relationship with Metropolitan or with any members of Metropolitan.

17. The actions of defendant Operative Plasterers, or defendant Local 60, or defendant Local 202, and of defendant Local 852 alleged and described in paragraphs 11 through 15 hereinabove were wrongful and in violation of the 1961 Agreement for the reason that the drywall taping work performed, and at those times being preformed, on the said construction projects is and was recognized by the 1961 Agreement to be within the jurisdiction of Painters.

18. On or abour October 7, 1974 the strike or work stoppage described hereinabove was terminated and at or about such time the persons who had been sent or brought in by defendants, as alleged and described in paragraphs 11 through 16 hereinabove left the job and were replaced by memhers of Drywall Tapers.

19. On or abour March 18, 1975, drywall taping work then being performed by National Wall Systems, Inc., a drywall employer, on serveral construction projects, including a construction project known as Metro North, located between 101st Street and

102nd Streets, and betwenn First Avenue and East River Drive, in the Borough of Manhattan, City, County and State of New York was stopped upon instructions of Drywall Tapers, pursuant to the collective bargaining agreement then in effect, for the reason that the said employer was delinquent in payment of fringe benefit contributions owing by him to certain welfare trust funds, and the work stoppage continued until payment was made by such employer to such welfare trust funds on or about March 21, 1975.

20. On or about Marc h 20, 1975, the aforesaid National Wall Systems, Inc., subcontracted the drywall taping work on the construction project known as Metro North to an employer not under contract with Drywall Tapers; and at that time or soon thereafter defendants Operative Plasterers and Local 60, in concert and participation with each other and with such other employer, sent members of defendant Local 60 and/or other persons onto such project to perform drywall taping work which, prior to the stoppage of work abovedescribed, had been performed or was to be performed by members of Drywall Tapers, which work involved taping or pointing of drywall to receive paint and not to receive plaster finish, or acoustical finish, or imitation acoustical finish; and thereafter defendant Operative Plasterers and defendant Local 60 asserted and have continued to assert jurisdiction over such work and bargaining rights over the persons performing it.

23. In or about August 1975, at a construction project located at Williams and Riverdale Streets, Borough of Brooklyn, County of Kings, City and State of New York, defendant Operative Plasterers and defendant Local 202, acting in concert and participation with each other and with Prince Carpentry, Inc., the drywall taping employer on such project, sent members of Local 60 and/or other persons onto such project to perform drywall taping work which work involved taping and pointing of drywall to receive paint, and not to receive plaster finish, or acoustical finish, or imitation acoustical finish; and thereafter defendant Operative Plasterers and defendant Local 202 asserted and have continued to assert jurisdiction over such work and bargaining rights over the persons performing it.

24. In or about June 1975 at a construction project named Kent Village located at Kent Street, Borough of Brooklyn, County of Kings, City and State of New York, defendant Operative Plasterers and defendant Local 202, acting in concert and participation with each other and with Prince Carpentry, Inc., the drywall taping employer on such project, sent members of Local 202 and/or other persons onto such project to perform drywall taping work which work involved taping and pointing of drywall to receive paint, and not to receive plaster finish, or acoustical finish, or imitation acoustical finish; and thereafter defendant Operative Plasterers and defendant Local 202 asserted and have continued to assert jurisdiction over such work and bargaining rights over the persons performing it.

21. On or about March 30, 1975, at a construction project located at 106th Street and Fifth Avenue, Borough of Manhattan, City County and State of New York, defendant Operative Plasterers and defendant Local 60, acting in concert and participation with each other and with Prince Carpentry, Inc., the drywall taping employer on such project, sent members of Local 60 and/or other persons onto such project to perform drywall taping work, which work involved taping and pointing of drywall to receive paint, and not to receive plaster finish, or acoustical finish, or imitation acoustical finish; and thereafter defendant Operative Plasterers and defendant Local 60 asserted and have continued to assert jurisdiction over such work and bargaining rights over the persons performing it.

22. On or about August 1975, at a construction project named Kingsborough Community College located in the Bouough of Brooklyn, County of Kings City and State of New York, defendant Operative Plasterers and defendant Local 202, acting in concert anc participation with each other and with A. & M. Wallboard Inc., the drywall taping employer on such project, sent members of Local 202 and/or other person onto such project to perform drywall taping work, which work involved taping or pointing of drywall to receive paint, and not to receive plaster finish, or acoustical finish, or imitation acoustical finish and thereafter defendant Operative Plasterers and defendant Local 202 asserted and have continued to assert jurisdiction over such work and bargaining rights over the persons performing it.

25. Each of the employers named or described in paragraphs 21 through 24 is, and at all times herein mentioned has been, a member of Metropolitan; and the recognized or certified exclusive bargaining representative of all drywall taping employees employed by each such employer is, and at the time specified was, Drywall Tapers.

26. The actions of defendant Operative Plasterers, of defendant Local 60, of defendant Local 202, and of defendant Local 852 alleged and described in paragraphs 21 through 24 hereinabove were and are wrongful and in violation of the 1961 Agreement for the reason that the drywall taping work performed on the said construction projects, and at those times being performed, is and was work recognized and agreed by the 1961 Agreement to be within the jurisdiction of Painters.

27. Plaintiff CHARLES LONG and certain other members of the class described in paragraph 2 hereinabove have lost and/or been denied employment by reason of the acts of defendants alleged and described in paragraphs 21 through 24 hereinabove; and plaintiffs LONG, PASQUALE DE ROSA, ALBERT ZAPPY, HARRY EDWARDS and ANTHONY DEL GAIS, and all members of the class described in paragraph 2 hereinabove have, and each of them has, suffered grievous and material injury in the reduction of job opportunities available to them, in the reduction of payments received by welfare trust funds of which they are beneficiaries and in the weakening of their union representation as a direct result of the acts of defendants alleged and described in paragraphs 11 through 15 and 21 through 24 hereinabove; and unless this court otherwise directs, defendants will continue to perform such acts and the said plaintiffs and

other members of the class described in paragraph 2 hereinabove will continue to suffer such grievous and material injury for which there is no adequate remedy at law.

28. By the acts alleged, set forth and described in paragraphs 11 through 15 and 21 through 24 hereinabove, defendants have, and each of them has, breached and violated the 1961 Agreement in material and substantial degree.

29. Unless this Court otherwise directs, defendants and each of them will continue to breach and violate the 1961 Agreement by sending their members and/or other persons to perform work within the jurisdiction of Painters and of Drywall Tapers and by asserting jurisdiction over such work and bargaining rights over persons performing it, and as a direct result thereof plaintiff Drywall Tapers and its members will continue to suffer grievous and material, irreparable injury and damage in the loss of their labor organization's strength, jurisdiction and bargaining rights, for which injury and damage there is no adequate remedy at law.

30. Plaintiff Drywall Tapers and its members, and plaintiffs Charles Long, et al., have exhausted and/or made diligent efforts to exercise and exhaust all remedies made available to them by the 1961 Agreement and other applicable agreements and have exhausted every reasonable method available to them short of, and except for, stoppage of work and initiation of suit to protect the rights herein asserted and to remedy the wrongs herin complained of.

WHEREFORE, plaintiffs demand judgment: 21a

1. declaring that the acts complained of constitute breaches by defendants, and in particular by defendant Operative Plasterers, of the 1961 Agreement;

2. declaring that the terms and intent of the 1961 Agreement are that defendant Operative Plasterers, and all its local labor organizations and other subordinate bodies, shall recognize the jurisdiction of Painters over all work that involves taping and pointing of drywall that is not to receive plaster finish or acoustical finish, or imitation acoustical finish, and that Operative Plasterers and its local labor organizations and other subordinate bodies are bound and obligated to refrain from asserting either jurisdiction over such work or bargaining rights over persons performing such work and to refrain from interfering with the bargaining relations of Painters and its subordinate bodies in connection with such work.

3. declaring that the act of defendants described in paragraphs 11 through 15 and 21 through 24 of this complaint were and are in violation of the obligations of such defendant under the 1961 Agreement.

4. Granting to plaintiffs specific performance of the 1961 Agreement insofar as the same refers to taping or pointing of drywall that is not to receive plaster, acoustical or imitation acoustical finish.

5. Permanently enjoining and restraining defendant Local 60, defendant Local 202 and defendant Local 852, the officers agents, employees and attorneys , from asserting jurisdiction over

any work involving taping or pointing of drywall that is not to recieve plaster finish, or acoustical finish or imitation acoustical finish.

6. Granting compensatory damages to plaintiffs and members of the class represented in such sums as they may be found to have suffererd, including but not limited to lost wages, vacation benefits and the payments that would have been paid by employers to the various welfare and other fringe benefit funds of which drywall taping employees are beneficiaries, which payments were not paid to such funds by reason of or because of the acts complained of.

7. Granting exemplary or punitive damages in such sum as the Court may deem appropriate.

8. Granting to plaintiffs their costs and necessary expenses, including their reasonable attorney's fees; and

9. For such other, further and different relief as may be appropriate.

BURTON H. HALL
Attorney for Plaintiffs
401 Broadway
New York, New York 10013

(212) 431-9114

State Of New York
SS:.
County of New York

John R. Alfarone being duly sworn, deposes and says: deponent is the President and Business Manager of Drywall Tapers and Pointers of Greater New York, Local Union 1974, one of the plaintiffs in the within action; deponent has read the foregoing complaint and knows the contents thereof; and the same is true to deponents won knowledge, except as to any matter therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

The grounds for deponents belief as to all matters not stated upon deponents knowledge are as follows: office records of plaintiff labor organization and its parent International labor organization, The International Brotherhood of Painters And Allied Trades, AFL-CIO maintained by either or both labor organizations in the ordinary course of there business.

John Alfarone
JOHN ALFARONE

Sworn to before me on
this 28th day of August 1975

[illegible] H. HALL
Notary Public, State of New Y[illegible]
No. [illegible]2129 Qual. in [illegible] C.
Commis[illegible] Expires March 30, 1976

Notice of Motion
for Preliminary Injuction

Persons Hy Rec'd on 8/29/75

Copy sent to Burke Adams 9/5/75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS ANDPOINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG, et al., individually, etc.,

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al.,

Defendants.

75 Civ. 4289 MH CES

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that, upon the affidavit of JOHN R. ALFARONE, sworn to the 28th day of August, 1975 and annexed hereto, and upon the Verified Complaint herein, verified the 28th day of August by John Alfarone, President and Business Manager of plaintiff Drywall Tapers, and upon all the papers and proceedings herein, plaintiffs will move this Court, pursuant to Rule 65, Federal Rules of Civil Procedure, on September 8 1975, at Room 2201, United States Court House, Foley Square, New York, New York, at 10:00 A.M., for a preliminary injunction ordering and directing defendants, their employees, agents, servants and attorneys and other persons in active concert or participation with any of them, to recognize and abide by the provisions of a certain Memorandum of Understanding entered into between defendant OPERATIVE PLASTERERS AND CEMENT MASONS' INTERNATIONAL ASSOCIATION and certain other international unions on November 29, 1961, and in accordance therewith to refrain and desist from asserting either jurisdiction or bargaining rights over anywork involving taping or pointing of drywall surfaces that are not to receive

(1)

either plaster finish, or acoustical finish, or imitation acoustical finish, pending final hearing and determination in this action; and in the alternative, if such relief be denied, directing an early trial in the within action; and for such other, further and different relief as may be appropriate.

PLEASE TAKE FURTHER NOTICE that any answering or opposing papers to be submitted on the return date of this motion or before such date must be served upon the undersigned no later than three ~~business~~ days before the return date stated above.

Yours, etc.,

BURTON H. HALL
Attorney for Plaintiffs
401 Broadway
New York, N.Y., 10013

(212) 431-9114

Affidavit of John R. Alfarone
In Support of Motion for Preliminary Injuction

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG et al., individually etc.

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al.,

Defendants

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JOHN R. ALFARONE, being duly sworn, deposes and says that:

1. Your deponent is President and Business Manager of plaintiff DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, and is fully familiar with the acts and proceedings recounted herein; and he makes this affidavit in support of plaintiffs' application for a preliminary injunction.

2. The Verified C omplaint herein (verified by your deponent) is submitted together with this affidavit in support of plaintiffs' motion, and for the convenience of the Court a copy thereof is annexed to the original copy of this affidavit submitted to the Court.

3. This affidavit will seek to avoid repetition of the facts and factual allegations set forth in the verified complaint. It will attempt rather to complement the Verified

Complaint by providing a brief summary of the issue and setting forth facts that are not stated in detail in the Verified Complaint.

4. Plaintiffs-- Drywall Tapers Local 1974 and individual members representing the entire class of Local 1974 members who are either employed or seeking employment as drywall tapers-- sue on, and seek specific performance of, a contract, establishing jurisdictional boundaries that was entered into on November 29, 1961 between Local 1974's parent International union, the Brotherhood of Painters, and two other international unions, on of them being defendant Operative Plasterers and Cement Masons International Association. The Contract (herein: the 1961 Agreement provides in relevant part:

> "F. POINTING, TAPING AND TEXTURING ON DRYWALL SURFACES.
>
> "1. All pointing and taping of drywall, regardless of material used, is Painters' work, providing the drywall surfaces are not to receive plaster, acoustical or imitation acoustical finisnes....
>
> "2. The application of plaster, acoustical or imitation acoustical finsihes shall be the work of Plasterers, as well as the preparatory pointing and taping of drywall surfaces that are to receive those finishes."

The 1961 Agreement titled "Memorandum of Understanding" was printed in booklet for by the three international unions jointly, with the emblems of the three internationals printed on the outside cover; on the inside of the cover appears the following statement:

> "This Memorandum of Understanding is to supersede any and all agreements or understandings, either written or oral, which have been in use over the years, which pertain to the items of work outlined in this Memorandum of Understanding."

Plaintiff Drywall Tapers Local 1974 was chartered by the Brotherhood of Painters in 1970 and assigned by it all its jurisdiction, within the five boroughs of New York City and certain portions of Nassau County, over drywall taping and pointing; since August 1, 1971, plaintiff Drywall Tapers Local 1974 has been the recognized and/or certified representative for drywall tapers working in such area.

6. On July 31, 1974, the collective bargaining agreement previously in force between Local 1974 and the major employers' association with which it bargains (herein referred to as "Metropokitan") expired and Local 1974 went on strike. During the next two months , while the strike was in process, defendant labor organizations sent strikebreakers through Local 1974's picket lines to perform work that had, up to the beginning of the strike, been performed by Local 1974's members. When the strike ended on October 7, 1974, the strikebreakers were removed from the jobs and replaced by Local 1974 members.

7. Drywall Tapers Local 1974 entered into a new collective bargaining agreement with Metropolitan on October 7, 1974, which will continue until July 31, 1977. The agreement provides for substantially improved conditions, especially safety conditions, and for highter wages and fringe benefits.

8. In or about November 1974, while Local 1974's collective bargaining agreement was already in force, the three defendant Operative Plasterers' local unions entered into what purports to be a collective bargaining agreement with Metropolitan; the

three locals (and defendant Operative Plasterers International itself) had never had any collective bargaining relations with Metropolitan or with any drywall employers previously and the three locals entered into the November 1974 surreptitiously, behind the backs of the drywall tapers and of other drywall employees. The agreement of the three locals provides for substantially lower wages and benefits than Local 1974's agreement, with no wage increases at all from January 2, 1975 until the expiration of the agreement in December 1977, for substantially poorer conditions, and in particular it abandons most of the safety conditions-- such as the ban on use of "stilts," the requirement that safety masks be worn in all operations bearing the risk of asbestos poisoning, and the ban on mixing of asbestos-containing materials that were and are present in Local 1974's agreement. The three locals' agreement of November 1974 appears to your deponent to be a classic instance of "sweetheart" agreement.

9. Beginning in mid-March 1975, at a time when a four-day stoppage was in effect on the jobs of one of the major employers, caused by the employer's delinquency in making required fringe - benefit contributions to certain welfare trust funds, the defendant Operative Plasterers' union sent their men onto several construction projects, described in paragraphs 21 through 24 of the Verified Complaint, to perform drywall taping work on surfaces that were to receive paint (and were not to receive either plaster, acoustical or imitation acoustical finish)-work that is clearly, under the terms of the 1961 Agreement, within the juris-

diction of the Brotherhood of Painters and of plaintiff Drywall Tapers Local 1974. In some of these instances, the men sent in by defendants replaced members of Drywall Tapers Local 1974 who were already working on the jobs. Defendant Operative Plasterers unions asserted, and continue to assert, jurisdiction and bargaining rights over the drywall taping work on these construction projects.

10. By reason of the assertion by defendant Operative Plasterers' unions of jurisdiction and bargaining rights over the drywall taping work on the construction projects described in paragraph 9, many drywall taping employees, members of Local 1974, have been required by their employers either to join the Operative Plasterers union, thereby giving up their membership in Local 1974, or else lose or be denied further employment on those construction projects. Refusal to do so has already resulted in loss of employment by several such employees.

11. Plaintiff Drywall Tapers Local 1974, and your deponent, have made diligent efforts to exhaust all private remedies available to the plaintiff local labor organization.

12. When the instance described in paragraph 11 of the Verified Complaint occurred (in or about August 1974), your deponent immediately contacted defendant Local 60's business manager and arranged a meeting at the job site, where your deponent protested the jurisdictional violation. In response, Local 60 briefly pulled its men off the job site but then sent them back again. In response to your deponent's further protests,

Local 60's business manager replied that he had been instructed by defendant Operative Plasterers' International to send them back. When the instances described in paragraphs 12, 13, 14 and 15 of the Verified Complaint occurred, your deponent made similar protests to the business managers of the defendant local unions but each time your deponent was advised by the the business manager that the decision had been made by defendant Operative Plasterers' International. The violations continued until the strike ended, at which time the strikebreakers were replaced by Local 1974's members.

13. When the invasion of the Metro North project, described in paragraphs 20 and 21 of the Verified Complaint, occurred, in March 1975, your deponent made repeated protests, demands for meetings, demands for mediation, and demands for hearing and decisions pursuant to existing dispute settlement plans. Mediation meetings were held, as was one hearing, all by a local body known as the Building Trades Employers' Association and composed of New York building contractors (employers). Two mediation meetings were held, in which your deponent protested, that defendants had improperly participated in a change of work assignment from one craft to another and that they had invaded Local 1974's (and the Brotherhood of Painters') work jurisdiction. The mediation meetings were unsuccessful. A hearing was held before the executive board of the Employers' Assocation on June 4, at which your deponent asserted both these questions and, in particular, sought to enforce Local 1974's rights under the 1961 Agreement. However, the Employers ' Association refused to

consider or decide the issue of change of work assignment and likewise refused to consider or decide the issue of Local 1974's rights under the 1961 Agreement. All that the Employers' Association did consider was a question arising under an earlier, 1947 jurisdictional arrangement, superseded by the 1961 Agreement, which distinquieshed between "adhesive materials" and "plaster materials." Your deponent pointed out that the 1961 Agreement superseded this arrangement and, moreover, that the provisions of Section F of the 1961 Agreement, by their terms, apply "regardless of material used."

14. In the Metro North dispute , the Employers' Association ruled on June 12, 1975 that the materials in question were "plaster materials." The Association did not rule, nor did it consider, any issue arising under the 1961 Agreement.

15. Meanwhile, your deponent protested, to the parent Impartial Jurisdictional Disputes Board of the AFL-CIO Building and Construction Trades Department, the Employers' Association's refusal to consider the change-of-work-assignment issue. The Board Chairman wrote to the various interested persons, in reply, on April 21, 1975, that "It is a violation of the Procedural Rules for a contractor who; has made a specific assignment of work to change such assignment unless there is agreement between the trades involved or a directive from the Board". Through Local 1974's parent Brotherhood of Painters, request was made upon the Impartial Board to hear the issue, but the Chairman refused by replying that the Employers' Association should hear it first. Since the latter continued in its refusal, neither

it nor the Impartial Board has ever undertaken to hear the issue. All this is expressed in extensive correspondence, a review of which makes your deponent believe that Local 1974 was, and has been, a victim of a slicked-up version of a "shell game."

16. By telegram of May 15, 1975, after it had become apparent to your deponent that a version of the "shell game" was being played, your deponent sent a telegram to its parent Brotherhood of Painters, and a copy thereof to the Chairman of the Impartial Board, protesting that "IT LOOKS TO US AS THOUGH THE MATTER IS BEING DELIBERATELY STALLED," and that "THE LETTERS THAT HAVE SINCE (APRIL 21) EMANATED FROM THE BOARD APPEAR TO BE DESIGNED FOR DILATORY PURPOSES ONLY." and expressed Local 1974's hope "THAT THE REPORTEDLY CLOSE RELATIONSHIP BETWEEN THE BOARD AND THE PLASTERING SUBCONTRACTOR, VINCENT COLLETTI, WILL NOT BE ALLOWED TO DELAY DETERMINATION OF THE DISPUTE OR EFFECT ITS OUTCOME." Though the Chairman of the Impartial Board acknowledged receipt of your deponent's telegram and the General President of the Brotherhood of Painters advised the Chairman, by letter of May 20, that he was "in agreement with (your deponent's) position," such protests were not successful. Your deponent notes that the aforesaid Vincent Colletti, to whom the employer on the Metro North job had, in March 1975, subcontracted the drywall taping work, had been on the Employers' Association Board of Governors, for some ten years, as president of the Contracting Plasterers' Association of New York, and the Fred J. Driscoll, Sr., President of the Employers' Association, who sat at the June 4 hearing

ex office, is the father of Fred J. Driscoll, Jr., who in addition to being Chairman of the Impartial Board is a member of the Building Trades Employers' Association.

17. The Employers' Association's decisions, pursuant to the provisions of the "New York Plan" and of the Building and Construction Trades Department's overall plan, are non-final and appealable to the Impartial Board. Through its Parent Brotherhood of Painters, Local 1974 sought to appeal the Employers' Association and sought a hearing by the Impartial Board concerning the two issues that the Employers' Association had failed to consider and decide: namely, the change-of-work-assignment issue and the issue of jurisdictional rights under the 1961 Agreement. The Impartial Board has failed to hear any such appeal or hold any such hearing. It at first scheduled an appeal from the Employers' Association, then repeatedly adjourned the appeal hearing, and then, by letters of July 8 and 18, 1975,announced that the hearing of the appeal was "postponed indefinitely" for the reason that, in March 1975, Local 1974 had demanded arbitration concerning the employer's violation of its collective bargaining agreement in subletting drywall taping work to a non-union subcontractor. By letter dated August 8, 1975, the Chairman of the Impartial Board declared that the Board revoked and denied its acceptance of the appeal, and would refuse to hear it.

18. Immediately following the occurrences described in paragraphs 22, 23 and 24 of the Verified Complaint, your deponent sought to resolve the disputes by attempting to contact the business managers of defendant Locals 60 and 202 and by requesting

mediation , but all your deponent's efforts have been unsuccessful.

19. Your deponent is advised by a representative of the Brotherhood of Painters that the latter has on file a letter dated December 11, 1973 from the Joint Administrative Committee, which supervises and governs the Impartial Jurisdictional Disputes Board, pursuant to the dispute settlement plan of the AFL-CIO Building and Construction Trades Department to the effect that the said Committee had instructed the Impartial Board to "defer action" on any request for a jurisdictional decision in cases involving drywall taping work. Your deponent is informed and verily believes that the meaning and effect of that direction is that the Impartial Jurisdictional Disputes Board will refuse to hear any claim by Local 1974 and/or its parent Brotherhood of Painters for protection of its rights under the 1961 Agreement.

20. For the reasons set forth in paragraphs 11 through 19, above, and im particular for those set forth in paragraph 19, any further efforts by Local 1974 or by any of the other plaintiffs to exercise the various private dispute-settlement plans and procedures would be futile. By the efforts described above, Local 1974 has exhaused all reasonable remedies availabe to it outside of the initiation of suit.

21. Unless otherwise ordered by this Court, defendants Operative Plasterers International and the defendant local unions will continue to assert jurisdiction and bargaining rights over work involving drywall taping of drywall surfaces that are to receive paint, in violation of the 1961 Agreement, and by reason

thereof plaintiff Drywall Tapers Local 1974 will suffer grievous and material, irreparable injury and damage in the diminution of its strength and the members of Local 1974 will continue to suffer grievous and material, irreparable injury and damage in the loss of employment and/or loss of employment opportunities by virtue of being required by drywall employers to join defendant unions and surrender their membership in Local 1974 as a condition to employment or further employment in drywall taping work.

22. There is no adequate remedy at law for the injury and damage complained of.

23. No previous application for the relief here requested has been made to any Court or agency.

WHEREFORE, your deponent prays that plaintiffs' motion for a preliminary injunction be granted.

JOHN R. ALFARONE

Sworn to before me this
28th day of August, 1975

[illegible] H. HALL
[illegible], State of New [illegible]
[illegible] 2129 Qual. in [illegible]
[illegible] Expires March 30, 19[illegible]6

Motion of Defendant OPCMIA and Defendant
Local 60, OPCMIA to Dismiss Complaint

Assigned to Judge Metzner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, and CHARLES LONG, et al., individually, etc., Plaintiffs,	)	
v.	)	75 Civ. 4289 C M M
OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al., Defendants.	)	

MOTION OF DEFENDANT OPCMIA AND DEFENDANT LOCAL 60, OPCMIA TO DISMISS COMPLAINT

Defendant Operative Plasterers' and Cement Masons' International Association (hereinafter "OPCMIA"), and Defendant Local 60 of the OPCMIA, hereby request the Court to dismiss the Complaint filed herein on the grounds that the Plaintiffs have failed to exhaust their inter-union administrative procedures before instituting suit.

The Court is respectfully directed to the attached Memorandum of Law in Support of Motion to Dismiss and in Opposition to Motion for Preliminary Injunction Filed on behalf of Defendants OPCMIA and Local 60 of the OPCMIA

and the affidavit of James J. Boyle with attached Exhibits 1 through 17.

Respectfully submitted,

O'DONOGHUE & O'DONOGHUE
1912 Sunderland Place, N.W.
Washington, D.C. 20036

By _____
Donald J. Capuano

_____
Glenn V. Whitaker

LEVIN & WEISSMAN
122 East 42nd Street
New York, New York 10017

_____
Roger M. Levin

Attorneys for the OPCMIA
and Local No. 60

Affidavit of James J. Boyle In
Support of Motion to Dismiss Complaint, etc.

Assigned to Judge Metzner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, and CHARLES LONG, et al., individually, etc., Plaintiffs, v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al., Defendants.	)	75 Civ. 4289 C M M

AFFIDAVIT OF JAMES J. BOYLE

DISTRICT OF COLUMBIA: ss

James J. Boyle, being duly sworn, deposes and says that:

1. Your deponent is a Vice President of the Operative Plasterers' and Cement Masons' International Association (hereinafter "OPCMIA" or "International") and has held that position for 5 years.

2. In connection with my duties as Vice President and previously as International Representative, I have been in charge of the Jurisdictional Department of the OPCMIA for 9 years. The records pertaining to jurisdictional disputes between the OPCMIA and other unions are under my control. I also have under my control records dealing with jurisdictional disputes which have been submitted to the Impartial Jurisdictional Disputes Board established by the Building and Construction Trades Department of the AFL-CIO and various employer associations.

3. The Constitution of the Building and Construction Trades Department of the AFL-CIO provides in Article X that:

> All jurisdictional disputes between or among affiliated National and International Unions and their affiliated Local Unions and employers shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the future by the Departmenbt for the settlement of jurisdictional disputes. Said present plan or any other plan adopted in the future shall be recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions.

(See Exhibit 1, attached hereto).

4. The OPCMIA and the International Brotherhood of Painters and Allied Trades, of which the Plaintiff Local 1974 is affiliated, are both members of the Building and Construction Trades Department and are bound by the above quoted language to settle all jurisdictional disputes between unions through the internal machinery established by the Department, whose decision shall be "final and binding". The Impartial Jurisdictional Disputes Board is the present method adopted by the unions affiliated with the Department for settling such disputes.

5. The Impartial Jurisdictional Disputes Board was established in the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan"), which is the agreement between the Building and Construction Trades Department and various employer associations, effective June 1, 1973. The "Plan" is included in Exhibit 2 (pages 1-25) attached hereto, (commonly referred to as the "Green Book").

6. Article VIII, Section 2(a) of the "Plan" (p. 16) also provides that all disputes involving work assignments "shall be resolved" in accordance with the "Plan":

> (a) The Department and each of its affiliated Unions agree that all cases, disputes or controversies involving jurisdictional disputes and assignments of work arising hereunder shall be resolved as provided herein and shall comply with the decisions and awards of the Board,

the Appeals Board or Hearings Panel established hereunder.

7. Article IX of the "Plan" provides that where a local plan exists (such as the New York Plan) for resolving jurisdictional disputes it shall be used in the first instance to resolve jurisdictional disputes, subject to appeal to the Impartial Jurisdictional Disputes Board. (Prior to July 1, 1975, appeals would have gone to the Appeals Board established in the "Plan", but as of that date the Appeals Board was abolished by mutual agreement of the parties who established the "Plan".)

8. Your deponent has read the complaint and the affidavit of John R. Alfarone, filed in this action, and denies that the internal contractual procedures for settlement of jurisdictional disputes has been exhausted as the Plaintiffs contend.

9. The Plaintiffs rely in their complaint on a 1961 Memorandum of Understanding between the OPCMIA, the Bricklayers, Masons, and Plasterers International Union of America and the Brotherhood of Painters, Decorators and Paperhangers of America (hereinafter "Painters"), and even assuming that such agreement is still operative and that it is applicable in the New York area, Plaintiff has failed to exhaust procedures set out therein for resolution of disputes under that agreement. That agreement provides:

> If a dispute should arise over the interpretation or application of this Agreement, the two business agents of the respective unions shall make a conscientious endeavor to settle the dispute locally. Should the business agents fail to consummate a satisfactory understanding, they shall immediately draw up a joint or similar report describing the disputed work, including pictures and specifications of the work in dispute, and forward it to the Presidents of their respective International Unions.
>
> Disputes forwarded to the respective General Presidents shall be referred to a designated representative for immediate adjustment.

There shall be no stoppage of work while the dispute is in the process of settlement.

An Administrative Committee composed of one representative from each International Union shall be designated by the respective General Presidents to meet periodically to review work covered by this Agreement and to consider any problems which arise in order to adjust same.

10. Under the above procedure, if the two contending local unions cannot resolve a local dispute (such as those alleged to have occurred in the Complaint) they will either submit the dispute jointly to their respective General Presidents for resolution or the local business agent who is claiming the work will contact the General President of his union who will in turn send a written request to the General President of the union whose members are performing the work, asking the latter to appoint a representative to attempt a settlement of the dispute. Since my duties include supervision of the Jurisdictional Department of the OPCMIA and such requests to the General President of the OPCMIA are referred to your deponent, your deponent states that no such requests have been received by the OPCMIA from the General President of the Painters regarding any of the alleged disputes mentioned in the Complaint and/or affidavit filed by the Plaintiff in this case. As a result, the procedures for settling disputes contained in the 1961 Memorandum of Understanding have never been complied with by the Plaintiffs or the Painters.

11. If the representatives of the two General Presidents cannot resolve the dispute in accordance with the procedures quoted in Paragraph 9 above, then either union would have the right to ask the Impartial Jurisdictional Disputes Board (or the local board if one exists, such as the New York Board) to hear and decide the dispute. On January 28, 1972, the General President of the Painters complained about the

the predecessor to the Impartial Jurisdictional Disputes Board hearing cases before the disputes procedure under the Memorandum of Understanding was complied with. He stated, "We will continue to insist that the disputes procedures, as outlined in the Memorandum, be fully recognized and implemented."

12. However, the records of the OPCMIA reflect that rather than the Painters International requesting the General President of the OPCMIA to assign a representative to settle the alleged dispute in the New York area, its affiliated Local 1974 utulized the procedures of the New York Plan which provide first for mediation and then arbitration. On March 27, 1975, Local 1974 requested mediation under the New York Plan on the Metro North job (discussed in Paragraph 20 of the Complaint and Paragraph 13 of Mr. Alfarone's affidavit) concerning an alleged change of assignment from Tapers to Plasterers (see Exhibit 3 attached hereto). Actually, this was not a "change of assignment" because National Wall Systems, Inc. subcontracted the joint treatment of the drywall to a separate contractor, Vincent Colletti & Co., for buildings 2 and 3 and because a plaster material - "Sta-Smooth" was going to be used on those buildings rather than the adhesive type joint material which was used on building 1 where the work was done by members of Plaintiff Local 1974 (see Exhibit 4).

13. The mediation was held on April 8, 1975 and the record of that meeting shows that the Plaintiffs objected to the alleged change of assignment and that the issue of which trade was entitled to use the material involved was not then before the mediator, because these materials were being chemically analyzed. The mediator determined this was not a jurisdictional dispute (Exhibit 5). The Painters International Union, on April 21, 1975, then requested the Impartial Jurisdictional Disputes Board to

hear the case (Exhibit 6). While the Impartial Jurisdictional Disputes Board was corresponding with the Painters for additional details, the New York Board apparently held another mediation meeting on May 15, 1975, where the contesting parties disputed whether "Sta-Smooth" was a plaster or adhesive material. Since no resolution was reached Plaintiff requested arbitratrion under the New York Plan (Exhibit 7).

14. The Impartial Jurisdictional Disputes Board then referred the Painters requested for a hearing to the New York Plan since under Article IX of the "Plan" the local board is to decide these disputes in the first instance.

15. The Executive Committee of the Building Trades Employers' Association under the New York Plan held the hearing on June 4, 1975. During that hearing both the Plaintiff and the Defendant Plasterers' Local Unions produced laboratory analysis of the "Sta-Smooth" product being used on the Metro North project to determine if it was a plaster material or an adhesive. On June 12, 1975, the Building Trades Employers' Association issued its decision which states:

> --Sta-Smooth, used for Pointing, Taping and Filling, application of.
>
> Tapers Union Local 1974 vs. Plasters Union Local 60 -- Metro North, 101st St. and East River Drive, Buildings No. 3 and 4, New York City.
>
> The Executive Committee finds that the material (Sta-Smooth) used for Pointing, Taping and Filling of joints on drywall is a plaster material and is the work of the Plasterers. -- Decision of the Executive Committee, June 11, 1975.

(See Exhibit 8).

15.A. There is a Decision of Record contained in the Green Book (Exhibit 2, pp. 144, 145) which provides in part as follows:

When plaster material is used to do pointing and filling it shall be the work of members of the Operative Plasterers and Cement Finishers International Association of the United States and Canada - and/or - members of the Bricklayers, Masons and Plasterers International Union of America.

When adhesive materials are used it shall be the work of members of the Brotherhood of Painters, Decorators and Paperhangers of America.

16. On June 18, 1975, the Painters International appealed the June 12, 1975 decision of the Building Trades Employers Association to the Impartial Jurisdictional Disputes Board and on June 20, 1975, the Board agreed to hear the appeal on July 10, 1975 (Exhibit 9). Your deponent notes that on December 11, 1973, the Joint Administrative Committee which supervises the Impartial Jurisdictional Disputes Board did state that the Board would "defer action" on jurisdictional disputes involving pointing and taping of drywall as Plaintiff claims, (affidavit paragraphs 19 and 20) but the Board's action of June 20, 1975 agreeing to accept the appeal on this very issue clearly indicates that the Impartial Jurisdictional Disputes Board is available to resolve the dispute. Furthermore, the New York Plan has always been available to Plaintiff Local 1974 for resolution of any jurisdictional dispute.

17. The Impartial Jurisdictional Disputes Board postponed the appeal hearing from July 10 to July 17, 1975, and in the meantime was notified that Plaintiff Local 1974 was pursuing arbitration against one of the contractors on the Metro North project which arbitration the Board felt would affect work jurisdiction. As such, by proceeding with the arbitration, Plaintiff Local 1974 was violating Article VII, Section 5 of the Plan which prohibits a union from attempting to establish work jurisdiction on a unilateral basis through arbitration with an employer. In view of the pending

arbitration proceeding, the Board notified the Painters International on July 10 that the July 17 hearing was postponed indefinitely until notified whether the Plaintiff was going to pursue its appeal to the Impartial Jurisdictional Disputes Board or the arbitration proceeding (Exhibit 10, 11). Again, on July 18, 1975, the Painters International was notifed that the Impartial Jurisdictional Disputes Board found:

> This notice of Intention to Arbitrate involves jurisdiction and is in violation of Article VII, Section 5 of the Plan and your Local Union should be so notified.
>
> Again, until this office is advised that the arbitration has been dropped, the hearing of your appeal is postponed indefinitely.

(Exhibit 12).

18. Finally, on August 7, 1975, when the Impartial Jurisdictional Disputes Board still had not been notified that the arbitration was dropped it withdrew its acceptance of the appeal of the Painters to the June 12, 1975 decision under the New York Plan (Exhibit 13).

19. Significantly, on or about July 28, 1975, during the very time Plaintiff Local 1974 was persisting in its arbitration with National Wall Systems, which really involved a jurisdictional dispute, all General Presidents of the unions affiliated with the Building and Construction Trades Department (including President Raftery of the Painters) signed a statement condemning resort to arbitration to resolve jurisdictional issues as violative of Article VII, Section 5 of the Plan (Exhibit 14).

20. The above chronology and attached exhibits demonstrate that Plaintiffs had a viable means to resolve the alleged dispute with the Defendants through effective internal

contractual machinery but that through its own action it has precluded relief by the Impartial Jurisdictional Disputes Board and chosen to proceed through arbitration with the employer. Even if the Plaintiff believes the Building Trades Employers' Association Executive Committee under the New York Plan decided the case improperly or ignored relevant evidence as alleged, the appeal to the Impartial Jurisdictional Disputes Board was the procedure which the Plaintiff was bound to utilize by virtue of its affiliation with the Building and Construction Trades Department and its participation in the "Plan".

21. Contrary to the assertions in the Complaint, Paragraph 16A, the Defendant OPCMIA has had a collective bargaining agreement with the Metropolitan New York Drywall Contractors Association, Inc. since 1966. Plaintiff Local 1974 was also aware that the Defendant Plasterers Locals 60, 202 and 852 were negotiating a contract with Metropolitan prior to its execution in December, 1974. Said contract is not a "sweetheart" contract as alleged by the Plaintiff (affidavit, paragraph 18), but is a valid contract negotiated at arms length and designed to provide the employees represented by the three Defendant Plasterers local unions with reasonable terms and conditions of employment while performing work covered thereby. Working under this agreement are many plasterers performing taping on drywall with plaster materials employed by member contractors of Metropolitan. If the relief sought by the Plaintiff is granted it would result in these plasterers being laid off from their employment, and if the Defendants are forced to in effect "renounce" pointing and taping with plaster materials it could result in their being sued by the contractor members of Metropolitan for violation of their collective bargaining agreements.

21. While the Plaintiff is relying upon the 1961 Memorandum of Understanding, its parent, the Painters International has in the past stated that the Memorandum was abrogated by the OPCMIA. On January 28, 1972, the General President of the Painters wrote to the General President of the OPCMIA complaining about the latter submitting disputes to the predecesor of the Impartial Jurisdictional Disputes Board for decision. The General President of the Painters concluded that letter by stating: "We can only assume that by your acts, you have in fact abrogated the Memorandum of Understanding dated November 29, 1961." The General President of the Painters then reported to his General Executive Board that:

> Further, by their actions (OP&CMIA and BMPIU) of January 21, 1972, requesting that the Board process requests for decision of jurisdictional disputes that are clearly covered by the Memorandum of Understanding dated November 29, 1961, they had in fact abrogated the Memorandum. (emphasis added)

The General Executive Board then "unanimously approved of the General President's actions regarding the National Joint Board for the Settlement of Jurisdictional Disputes, the OP&CMIA and BMPIU" (Exhibit 15).

22. The OPCMIA, while attempting to work within the framework of the Memorandum of Understanding for many years, considers that the Memorandum has been abrogated by the Painters by their many violations of it over the years, their attempts to obtain work rightly belonging to the OPCMIA under the guise of the Memorandum, and the Painters' failure to turn work over to the OPCMIA when the Impartial Jurisdictional Disputes Board awards it to the OPCMIA.

23. In addition, the Painters International has violated the Memorandum of Understanding in its 1963 agreement with the Gypsum Drywall Contractors International Association (which your deponent believes is still applicable) by including a provision which claims to recognize the Painters as having "exclusive jurisdiction over all preparatory and finishing work in the drywall industry" (emphasis

added). Even assuming the validity of the 1961 Memorandum of Understanding, this agreement did not recognize the jurisdiction of the Plasterers contained in Paragraph F.2. of the Memorandum. The current agreement of Plaintiff Local 1974 with the Metropolitan New York Dry Wall Contractors Association, in Article 1, Sec. 1(a), also violates the Memorandum of Understanding by claiming jurisdiction over "taping and finishing of all gypsum drywall . . . (emphasis added). (Exhibit 16) as well as other work properly within the jurisdiction of the OPCMIA.

24. The implication of bias against Mr. Colletti and Mr. Fred Driscoll, Jr., Chairman of the Impartial Jurisdictional Disputes Board, contained in Paragraph 16 of Mr. Alfarone's affidavit filed herein are malicious and without foundation. The fact that the Impartial Jurisdictional Disputes Board agreed to hear the Metro North appeal of Plaintiff Local 1974 disposes of such allegations against Mr. Driscoll. It is the action of Local 1974 itself which precluded the hearing of such appeal.

25. Your deponent has just been advised that on or about September 12, 1975 Plaintiff Local 1974 filed a petition in the Supreme Court of the State of New York against OPCMIA Local 60 to set aside the arbitration award entered on June 12, 1975 under the New York Plan on Metro North. This again appears to be an attempt by the Plaintiff Local 1974 to avoid the established internal machinery for the settlement of jurisdictional disputes (Exhibit 17).

James J. Boyle
JAMES J. BOYLE

Subscribed and sworn to before me
this 15th day of September, 1975.

Lois J. VanKeuren
Notary Public, D.C.

My Commission Expires
November 30 1979

Exhibit 1
Annexed to Affidavit of
James J. Boyle

Organized February 10, 1908

CONSTITUTION
of the
Building and Construction Trades Department AFL-CIO

Amended October, 1973

General Offices
815 16th St., N.W.
Washington, D.C. 20006

EXCI

the basis that the applicant is not considered "appropriate" for affiliation with the Building and Construction Trades Department.

ARTICLE X

Jurisdictional Disputes

All jurisdictional disputes between or among affiliated National and International Unions and their affiliated Local Unions and employers shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the future by the Department for the settlement of jurisdictional disputes. Said present plan or any other plan adopted in the future shall be recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions.

ARTICLE XI

Exhaustion of Remedies and Appeals

Section 1. No affiliated National or International Union or local affiliate thereof, Local or State Building and Construction

Trades Council shall, as to any matter within the jurisdiction of the Department, resort to court proceedings against the Department or any affiliated National or International Union or any local affiliate thereof, without first exhausting internal remedies within the structure of this Department. Affiliated National and International Unions, and Local and State Building and Construction Trades Councils shall adhere to the following procedure:

A. Appeals from any action of any State or Local Building and Construction Trades Council may be made to the President of the Department.

B. Appeals from any decision of the President of the Department may be made within thirty (30) days thereof to the Executive Council.

C. Appeals from any decision of the Executive Council may be made to the next Convention and must be filed with the Department not later than sixty (60) days after the decision of the Executive Council.

Section 2. All appeals shall be in writ-

ing and shall be served on all interested parties.

Section 3. Decisions rendered shall be effective until reversed or sustained upon appeal.

ARTICLE XII

Local Council's Constitution and Bylaws

The Department shall adopt a uniform Constitution and Bylaws for chartered Local Building and Construction Trades Councils. Local Councils may enter additional provisions in the uniform Constitution and Bylaws, provided they are not inconsistent with the Department's Constitution, and are first submitted to the Department for approval before becoming effective.

ARTICLE XIII

Local Unions—Affiliation Local Councils

All Building and Construction Trades Local Unions of National and International Unions affiliated with the Department in the geographical jurisdiction of Local Building and Construction Trades Councils shall affiliate with said Local Council.

Exhibit 2
Annexed to Affidavit of
James J. Boyle

Approved by

The Building and Construction Trades Department, AFL-CIO

AGREEMENTS AND DECISIONS RENDERED AFFECTING THE BUILDING INDUSTRY

By the

American Federation of Labor

Building and Construction Trades Department, AFL-CIO

National Board for Jurisdictional Awards

National Referees J. A. Lapp, P. W. Eller and W. L. Hutcheson

JUNE 1, 1975

Ex. 2

PLAN FOR SETTLEMENT OF JURISDICTIONAL DISPUTES IN THE CONSTRUCTION INDUSTRY

PREAMBLE

This Agreement is entered into by and among the Building and Construction Trades Department, AFL-CIO, on behalf of its constituent national and international unions (referred to hereinafter as the Department), and the Employer Associations signatory to this Agreement (referred to hereinafter as the Employer Associations).

The parties to this Agreement dedicate their efforts to improving the construction industry by providing machinery for the handling of disputes over work assignments without strikes or work stoppages thus stabilizing employment in the industry at the same time increasing both its efficiency and capacity to furnish construction services to the public at reasonable cost.

ARTICLE I

SCOPE OF APPLICATION

The procedures shall apply to:

(a) Employers who employ members of the organizations affiliated with the Department, and who have signed a stipulation setting forth that they are willing to be bound by the terms of the Agreement establishing this Impartial Jurisdictional Disputes Board or who are members of a stipulated

association of employers with authority to bind its members, or who are parties to a collective bargaining agreement providing for the settlement of jurisdictional disputes under these procedures herein set forth; provided, that any such employers who have agreed to be so bound, but were not parties to the predecessor Plan for Settling Jurisdictional Disputes of April 3, 1970, must reaffirm their agreement in order to be accepted in this Plan.

The essence of this Plan assumes voluntary participation. National Employer Associations shall encourage participation in this Plan by their chapters and members, but no contractor stipulation or agreement shall be recognized by the Impartial Jurisdictional Disputes Board if it is shown to the satisfaction of this Board that it is the result of unlawful strikes, work stoppages or other coercive activity or any activity which is contrary to the voluntary nature of this Plan, by a labor organization affiliated with the Department or that it results from the compulsion of legal or contractual proceedings arising from pre-existing labor-management agreements. Notwithstanding any other provision of this Plan should such action be taken against any chapter or member of any participating Employer Association to compel stipulation to the Plan, its parent association, if it is a signatory to this Plan, shall thereby have the option to terminate its participation upon written notice to the Board Chairman within thirty (30) days of such action or occurrence, provided that notice of the action or occurrence has been afforded to the Department by the parent association during the thirty (30) day period and prior to any notice of termination.

(b) All unions affiliated with the Department.

ARTICLE II

STIPULATION PROCEDURE

Sec. 1. The Department and all International Unions affiliated with the Department shall, in accordance with their constitutional powers, request each of the Building and Construction Trades Councils, District Councils and Local Unions, respectively:

(a) To secure voluntary written assent or stipulation to the Plan for Settlement of Jurisdictional Disputes in the Construction Industry by all Employers in signed agreement with said International Union, Council and/or Local Union except for such Employers who are stipulated to the Plan by the action of the Employers' Association of which they are members; or

(b) To proceed at earliest opportunity to negotiate Board stipulation into all agreements with each employer whose employees are represented by such Building Trades Council, District Council or Local Union.

All Employers' Associations shall request their local chapters to stipulate their membership to the Plan for Settlement of Jurisdictional Disputes in the Construction Industry unless the national Employers' Association has made such stipulation on behalf of its membership. In the event a local chapter refuses to stipulate, or its members individually refuse to stipulate, the national association shall notify the Impartial Jurisdictional Disputes Board and the Joint Administrative Committee of the negative action of the specific local chapter and/or the individual member.

ARTICLE III

IMPARTIAL JURISDICTIONAL DISPUTES BOARD

Sec. 1. There shall be established an Impartial Jurisdictional Disputes Board (hereinafter referred to as the "Board").

Sec. 2. The Joint Administrative Committee representing the Department and the signatory Employer Associations shall consist of eight (8) voting members, four (4) nominees from the Department and four (4) from the Employer Associations, who shall have the duty of selecting the three-man Board and selecting one of these three as the Impartial Chairman. The Joint Administrative Committee shall also select the Impartial Umpire of the Hearings Panel. The positions of Chairman and Vice-Chairman of the Joint Administrative Committee shall be designated annually. The Department and the signatory Employer Associations, respectively, shall alternately designate either the Chairman or the Vice-Chairman on such annual basis who shall be non-voting members of the Committee. The designee of the Department shall be the President of the Department.

Sec. 3. The Board shall be composed of three impartial members who are knowledgeable or experienced in the construction industry but who are not employed by either the labor or management segments of the industry, except that the Chairman or any member may be appointed from either segment of the industry if the Joint Administrative Committee is unanimous in its selection. The Joint Administrative Committee shall also appoint an alternate, to serve on the Board in the event of the absence of a regular member. In the event of the death, disability or resignation of a regular or alternate member, the Committee shall select a replacement.

Sec. 4. The Chairman of the Board shall be appointed on a full time basis for the duration of this Agreement with provision for automatic continuance of the chairmanship for any extension or renewal of this Agreement for a period of five years from the date of his selection by the Joint Administrative Committee with provision for renewal. The Chairman shall be compensated for his services at a rate to be established by the Joint Administrative Committee.

Should this Agreement not be extended or renewed during this five year period or if the Chairman is removed as described below, the Chairman shall be assured of a minimum of one year's additional compensation for his unexpired term, but in no event shall the Chairman receive more compensation than he would receive if a five year term had been actually served. The Chairman shall be subject to removal on the anniversary date of this Agreement by the decision of the Joint Administrative Committee.

Sec. 5. The Chairman of the Board shall be bonded and made responsible for disbursement of the Board's funds, shall keep the books of the Board and submit to the parties to the Agreement a quarterly financial statement; shall provide for an annual audit of the books by a certified public accountant and shall prepare annually a proposed budget of the necessary expenses of the Board

for the following twelve (12) months and submit same to the Joint Administrative Committee for approval. The total amount of the budget, when approved, shall be subscribed annually in advance 50 percent by the Department and 50 percent by the signatory Employer Associations. All expenditures shall be within the approved budget.

Sec. 6. The Board members serving with the Chairman shall be appointed on a per diem basis for a term of two years. The Board members shall serve for the duration of this Agreement with provision for automatic continuance of membership on the Board for the duration of their appointment by virtue of any extension or renewal of this Agreement.

Should this Agreement not be extended or renewed during the term of appointment of the Board members, or if a Board member is removed as described below, the Board members shall be assured of a minimum of six months additional compensation for their unexpired terms as determined by the Joint Administrative Committee but in no event shall the members receive more compensation than they would have received had they served their two-year term. The Board members shall be subject to removal from the Board on the anniversary date of the Agreement by the decision of the Joint Administrative Committee.

Sec. 7. The Board members shall be available for service at the call of the Chairman.

Sec. 8. The Board members shall be compensated for their services at a rate to be established by the Joint Administrative Committee. The Board members shall be reimbursed for necessary expenses incurred in the performance of their duties with the approval of the Chairman.

ARTICLE IV

APPEALS FROM LOCAL BOARDS

Sec. 1. The Impartial Jurisdictional Disputes Board is empowered to review and decide any appeal from a decision or ruling of a Local Board recognized under Article IX and such decision of the Board shall be final. The jurisdiction of the Board shall be discretionary and it is authorized, subject to the prior approval of the Joint Administrative Committee, to prescribe rules as to the types of the cases which it will accept for review. Such review shall be limited to the record of the complete proceedings of the Board below. No decision of the Board shall be considered as part of the record referred to in Article VI, Section 1(b) of this Plan.

Sec. 2. The Board shall have the authority to establish such procedural regulations and administrative practices as may be required for the effective administration of this appeals procedure subject to the prior approval of the Joint Administrative Committee.

ARTICLE V

BOARD RULES AND REGULATIONS

Sec. 1. The Board shall adapt its operations to assure that all cases submitted for its consideration shall be disposed of as expeditiously as possible.

Sec. 2. The Board shall have the authority to establish such procedural regulations and administrative practices as may be required for the effective adminstration of this Agreement, with the prior approval of the Joint Administrative Committee; provided such regulations and practices are consistent with the expressed terms of this Agreement.

Sec. 3. The Joint Administrative Committee shall have the power to revise the procedural regulations and administrative practices of the Board.

Sec. 4. The Chairman of the Board shall keep records of disputes and decisions and develop such statistical and operational information as may be of value to the Joint Administrative Committee. The Board shall from time to time make recommendations to the Joint Administrative Committee for changes in the procedural rules or provisions of the Plan which will strengthen and improve the effectiveness of the Plan.

Sec. 5. It shall be the duty of the Board to consider and decide cases of jurisdictional disputes in the Building and Construction Industry which disputes are referred to it by any of the International Unions involved in the dispute, or an Employer directly affected by the dispute on the work in which he is engaged or by the signatory Employer Association representing such Employer.

Because efficiency, cost or continuity and good management are essential to the well-being of the industry, the Board shall not ignore the interests of the consumer in settling jurisdictional disputes.

Sec. 6. In the interest of expediting resolutions

of jurisdictional disputes, the Board shall undertake to keep a record of decisions involving the same type of dispute and involving the same trades (not governed by an agreement or decision of record) and report such record quarterly to the Joint Administrative Committee. The Joint Administrative Committee, upon recommendation of the Board, may authorize the Chairman to issue immediate decisions in such disputes after having determined that the record indicates that such disputes are repetitive in fact.

Sec. 7. In the event one of the parties to the dispute believes that the Chairman has erred in his finding of a repetitive dispute in that it is not of a kind determined by the Joint Administrative Committee as repetitive, such party may request a determination by the full Board not later than five working days from the date of the decision of the Chairman. Pending decision by the full Board the parties to the dispute will abide by the decision of the Chairman.

Sec. 8. In the event any contending International Union or affected Employer feels that a decision rendered by the Board has been in error, it may within 10 working days of receipt of a decision, request reconsideration of that decision, including an oral hearing, provided there is notice of the additional evidence to be presented and, further, provided that the job decision has been accepted and put into effect by the affected parties, and further, that such job decision remains in continuous effect until and unless modified by the Board upon such reconsideration.

ARTICLE VI

BOARD PROCEDURE

Sec. 1(a). When a dispute is filed, the Board shall in all cases first investigate the claims of the disputing parties to determine whether or not a disposition thereof has been made by a previous decision or agreement of record or by recorded agreement between the parties to this dispute and attested by the Chairman and issue a ruling as to the decision or the agreement governing in the case, and determine whether one of the parties to the dispute has a rightful claim to the work under agreement or decision of record.

Sec. 1(b). All agreements and decisions recognized under the provisions of the Constitution of the Department shall be considered as constituting the record.

Sec. 2. When work has been assigned to a craft by an Employer on projects currently employing other building trades crafts, and the craft assigned the work has by prior agreement, understanding or practice conceded the work or a portion thereof to another craft or crafts, it shall be the responsibility of the crafts to inform the Employer of such agreement, understanding or practice and it shall be incumbent upon the crafts to honor such agreement, understanding or practice, subject to the penalties set forth in the internal procedure established under Article VIII, Section 2(e). Compliance by the Employers with the Agreement understanding or practice of the crafts involved does not constitute a change of assignment.

Sec. 3. The Board shall review decisions and

agreements of record with respect to disputes under consideration. If the Board finds that a dispute is not covered by an appropriate or applicable decision or agreement of record, it shall render a job decision in which the Board shall consider the established trade practice and pervailing practice in the locality, and such job decision shall be effective on the particular job only on which the dispute occurred. Because efficiency, cost or continuity and good management are essential to the well-being of the industry, the Board shall not ignore the interests of the consumer in settling jurisdictional disputes.

Sec. 4. Any job decision or ruling rendered by the Board under this Article may be appealed to a Hearings Panel provided for in Article X of this Agreement by any of the participating National or International Unions involved or may be referred by action of the Board to a Hearings Panel for a national decision. Any decision rendered by such a Hearings Panel shall immediately become part of the record referred to in Section 1(b) of this Article.

ARTICLE VII

CONTINUATION OF WORK

Sec. 1. During the existence of this Agreement, there shall be no strikes or work stoppages arising out of any jurisdictional dispute.

Contractors and subcontractors shall make work assignments in accordance with the Obligations of the Employers as set forth in Article VIII, and the Rules and Regulations of the Board. Members of organizations affiliated with the Department

shall continue to work on the basis of their original assignment.

Sec. 2. Recognizing that it is in the best interests of the parties to this Agreement, the Department, on behalf of itself and the General Presidents of each of the affiliated National and International Unions, reaffirms its desire to eliminate work stoppages, slowdowns and other impediments to job progress and its intent to comply with the provisions of the Plan prohibiting jurisdictional strikes and agrees to enforce these provisions by direction and action of their respective International offices. In the event of a work stoppage, the Employer shall elect, and be bound by, one of the following alternative courses of action to bring about termination of the work stoppage:

(a) the Employer may immediately notify the Board Chairman of the work stoppage and thereafter follow procedures set forth in this Agreement to bring about cessation of that work stoppage. Should work stoppages persist for more than forty-eight (48) hours following notification by the Board (Saturdays, Sundays and legal holidays excluded), the Chairman of the Board shall thereafter be empowered to institute the proceedings provided for under Article VIII, Section 2(e) of this Agreement to enforce compliance with the provisions of this Article. At the conclusion of the forty-eight (48) hour period described, nothing in this Agreement shall be construed to restrict or qualify the Employer's right to pursue legal methods for termination of any work stoppage while the procedures of this Agreement to arbitrate the underlying jurisdictional dispute are continuing, or, in the alternative, for the Employer to waive the procedures of this Agreement and to pursue methods of settlement of the underlying dispute other than those of the Board established hereunder; or

(b) the Employer may seek immediate judicial relief while pursuing the procedures of this Agreement to arbitrate the underlying dispute, thereby relieving the International Union of the application of the procedures specified in Article VIII, Section 2(e) of this Plan for that particular work stoppage. Choice of this option for a particular work stoppage by the Employer does not relieve any of the parties of their other obligations under this Plan, nor shall it operate to defer or avoid the resolution of the underlying jurisdictional dispute in accordance with the procedures of this Plan.

Sec. 3. When the Joint Administrative Committee has determined that an Employer or International Union is in violation of this Agreement, such Employer or International Union shall be denied a representative on any Hearings Panel or Committee established by this Agreement during the period of violation, provided, however, that no Employer who is not stipulated to this Plan shall be entitled to resolution by the Board of any dispute in which he is involved or to invoke any sanctions against any International Union.

Sec. 4. Any decision or interpretation rendered by the Board shall be immediately accepted and complied with by all parties subject to this Agreement.

Sec. 5. It shall be a violation of this Agreement

for any Local Union, International Union, Employer or Employers' Association to enter into any agreement, resolution or stipulation that attempts to establish any jurisdiction which deviates from the spirit and intent of the Agreement and Rules and Regulations of the Plan.

Sec. 6. It is understood that only those Employers or Employer Associations who employ members of the organizations affiliated with the Department shall be considered as bound by this Agreement when they have signed a stipulation setting forth that they are willing to subscribe to and be bound by the terms and provisions of this Agreement.

ARTICLE VIII

OBLIGATIONS OF THE PARTIES

To the end that proper assignments of work are made by the Employer involved and that jurisdictional disputes between unions are settled under the terms of the Plan without interruptions of work, it is therefore agreed as follows:

Sec. 1. *Obligations of the Employer.*

(a) Each Employer or Employer Association stipulated to this Plan agrees that all cases, disputes or controversies involving jurisdictional disputes or assignments of work arising under this Agreement shall be resolved as provided herein and shall comply with the decisions and awards of the Board, or Hearings Panels established hereunder. A jurisdictional dispute is defined as a dispute between unions over the assignment of work and in which the Employer has an interest.

(b) Each Employer agrees that he shall continue to make work assignments in accordance with the Rules and Regulations of the Board. Continued misassignments by an Employer as determined by the Board shall be reported by the Chairman of the Board to the Joint Administrative Committee which shall take such procedural or legal action against such Employer as it deems necessary and proper to effectuate the purposes of this Agreement.

(c) All participating Employer Associations shall inform their stipulated members, in writing, of their responsibility for the assignment of work in accordance with the Rules and Regulations of the Board.

(d) All participating Employer Associations shall encourage inclusion of work assignment training in all supervisory training programs.

(e) Each Employer who is bound by this Plan will use his best efforts to assure compliance with its terms by subcontractors engaged by the Employer on any construction job covered by the Plan.

Sec. 2. *Obligations of the Department and its Affiliated Unions.*

(a) The Department and each of its affiliated Unions agree that all cases, disputes or controversies involving jurisdictional disputes and assignments of work arising hereunder shall be resolved as provided herein and shall comply with the decisions and awards of the Board, or Hearings Panel established hereunder.

(b) The Department and each of its affiliated

International Unions agree that the establishment of picket lines and/or the stoppage of work by reason of an Employer's assignment of work are prohibited. No Local Union of an affiliated International shall institute or post picket lines for jurisdictional purposes.

(c) In the event of a jurisdictional dispute, resulting in a work stoppage, strike, picket line or other interference of the work, a report of that fact shall be made by the Employer and/or the International Union immediately to the Board, to the Building and Construction Trades Department and to the appropriate Employer Association office. The Board shall immediately advise the International Unions involved and the Department of the existence of such work stoppage, strike, picket line or other interference of the work.

(d) In the event pickets are posted by any local trades council or any affiliated local for jurisdictional purposes, the International Presidents and the Department will immediately direct all unions in the affected area to ignore such picketing and to continue to work. If in contravention of this Plan a jurisdictional work stoppage should occur, it is the intent of this Article that the work shall continue with the crafts cooperating to the maximum extent possible to enable job continuity.

(e) The Chairman of the Board, after having been advised of the hour and date that a work stoppage, strike, picket line or other interference of work exists, as described in paragraph (c) hereof, shall review the work situation on the project involved on a day-to-day basis thereafter, and if after two (2) working days he finds that the work

stoppage, strike, picket line or other interference of work persists he shall immediately notify the President of the Department and the Impartial Umpire. If the work stoppage, strike, picket line or other interference of the work continues during the eight (8) regular work hours of the succeeding workday, the Chairman of the Board shall immediately refer the dispute to a Hearings Panel as provided for in Article X. The Impartial Umpire is empowered to call a conference of the General Presidents of the unions involved for the purpose of determining whether or not a national agreement is possible. If an agreement is concluded and properly signed by the contesting parties and attested by the Imparital Umpire and the Chairman of the Board the terms and provisions of the agreement shall remain in effect as per the provisions of the Constitution of the Department. In the event that the dispute cannot be settled by agreement or is not settled by agreement at the end of thirty (30) days, the Impartial Umpire shall docket the case for hearing and decision by a Hearings Panel.

The Department has established an internal procedure dated 14th day of February, 1973, to assure compliance with the obligations imposed on its Affiliated Unions by Section 2(e) of Article VIII above.

(f) Upon execution of this Plan, the Department and each of its affiliated International Unions will, in writing, advise all local building and construction trades councils and all local unions of the provisions of this section and will direct that no jurisdictional picket lines be observed.

(g) The Chairman of the Board shall be re-

quested to send a monthly report to each General President, the President of the Department and to the executive heads of the signatory Employer Associations setting forth all information on jurisdictional disputes for that week. The report should include the location and job where the dispute occurred, the parties involved, the subject of the dispute and shall indicate whether picket lines were established and/or supported.

(h) It is further agreed that, if the parties hereto comply with all of the provisions of this Agreement relating to Article VIII, they shall be relieved of all other liability arising therefrom. No independent action may be based upon a decision by the Impartial Umpire or the Board upon a finding of failure to comply with the obligations of Article VIII by an International Union or by an Employer. Nor may any independent action be based on any decision or finding of the Impartial Umpire or Chairman of the Board under the internal procedure established pursuant to Article VIII, Section 2(e) to assure compliance with the Plan. This limitation of liability shall be binding upon all Locals of the International Unions and upon all Employers and their subsidiaries stipulated to this Plan. The limitation shall also apply to Employer Associations or individual employers subsequently stipulated to this Plan. Nothing contained in this section shall affect the rights of the parties contained in the Plan.

ARTICLE IX

LOCAL SETTLEMENTS

In any community or locality where a plan for the settlement of jurisdictional disputes which has

been recognized by the Department now exists, it shall be used in the first instance to bring about an agreement or settlement or decision. However, any such local settlement or agreement or decision shall only apply to the particular job in question and an appeal therefrom may be taken directly to the Impartial Jurisdictional Disputes Board by any of the parties involved.

ARTICLE X

HEARINGS PANEL

Sec. 1. Hearings Panels may be established hereunder and shall be composed of two disinterested General Presidents appointed by the Executive Council of the Department, two disinterested Employer representatives appointed by the signatory Employer Associations and the Impartial Umpire selected by the Joint Administrative Committee.

Sec. 2. The Joint Administrative Committee shall meet quarterly and among its other duties and responsibilities it shall, at each meeting, review the record of disputes filed with the Board and in particular shall review the record of decisions involving the same trades as submitted by the Board in accordance with Article V, Section 6 hereof. In the event the Joint Administrative Committee declares such disputes to be repetitive and authorizes the Chairman to issue immediate decisions as set forth in Article V, Section 6 the Joint Administrative Committee shall, nonetheless, refer the matter to the International Unions involved for a period of not more than 90 days during which time the Unions shall consult with the Employer Associations who represent Employers who have responsibility for that type of work. The

Unions shall endeavor to reach a national agreement governing future jurisdiction. If an agreement is reached, it shall be attested to by the Chairman of the Board and shall serve as a criterion for decisions in future disputes. Should the International Unions fail to reach an agreement within 90 days, the Joint Administrative Committee shall refer the dispute to the Hearings Panel for a national decision which shall be binding on all unions.

Sec. 3. In any case to go to a Hearings Panel, the Impartial Umpire shall notify all General Presidents of National and International Unions affiliated with the Department and the signatory Employer Associations stating the controversy to be considered and shall allow all parties interested to intervene. Thirty days' notice shall be given of the date set for the hearing. Briefs shall be submitted and exchanged by all parties to the dispute at least ten days prior to the hearing date.

Sec. 4. Making Decisions—The Hearings Panel shall in every instance consider all pertinent evidence and shall render a decision if possible within ten (10) days after the conclusion of the hearings. Copies of the Hearings Panel decisions shall be sent to all parties signatory to this Agreement.

Decisions of the Hearings Panel shall be immediately recognized under the provisions and Constitution of the Department and shall be considered as constituting the record.

Decisions of the Hearings Panel shall be immediately accepted and complied with by all parties to this Agreement subject to the conditions of this Agreement.

Sec. 5. In the event any party to a dispute fails to present its case within the stated time, the Board and the Hearings Panel shall, nevertheless, proceed with the case and make its decision on the basis of the evidence presented.

ARTICLE XI

TECHNOLOGICAL CHANGES

Sec. 1. The Joint Administrative Committee shall establish a standing Technological Change Committee. The Committee shall concern itself with technological changes in the Building and Construction Industry as they affect the jurisdiction of the various affiliated unions of the Building and Construction Trades Department. The Committee shall consist of ten members from the Building and Construction Trades Department and ten members from the signatory Employer Associations, respectively. The Committee shall select a chairman and a secretary.

Sec. 2. The Committee shall meet on an accelerated schedule for the purpose of completing its work at an early date. The Committee is authorized to establish subcommittees provided that there is equal representation of labor and management on each subcommittee. Each subcommittee shall elect a chairman and a secretary.

Sec. 3. The Committee shall examine technological changes in the industry and shall review new materials, equipment and methods of construction and procedures in light of existing agreements. The Committee may refer particular items to the crafts concerned who may establish committees to determine the craft jurisdiction and report their

decision to the Department and the signatory Employer Associations.

Sec. 4. The Committee shall file its report, including reports from subcommittees, with the Joint Administrative Committee not later than eight months from the date of this Agreement. The Joint Administrative Committee shall be kept fully informed of the progress of the Committee and its subcommittees during the course of their work.

Sec. 5. The Joint Administrative Committee is authorized and directed to have an indepth study immediately undertaken to determine whether highway, heavy-industrial and municipal-utility work should be exempt from coverage of the Plan.

ARTICLE XII

NATIONAL AGREEMENTS

Sec. 1. When national agreements between International Unions have been negotiated, immediate notice of such agreements shall be given to the appropriate management groups. Prior consultation with such groups regarding the making of agreements between International Unions is desirable and should be carried on.

Sec. 2. National agreements entered into and properly signed by disputing International Unions other than those provided for in Article VI, Section 1(a) shall be filed with the Board and attested by the Chairman. Such national agreements shall take effect prospectively and shall not apply to jobs in process at the time of execution. "Jobs in process" means any construction contract upon

which the date for submission of bids or proposals has passed.

ARTICLE XIII

NATIONAL LABOR RELATIONS BOARD

It is the sense of the parties hereto that the members and Chairman of the Board and the Impartial Umpire shall tender to the National Labor Relations Board their services as expert witnesses in any hearing held by the National Labor Relations Board under the provisions of Section 10(k) of the National Labor Relations Act, as amended, and that no fees shall be charged for such service beyond the statutory witness fees and mileage allowance.

ARTICLE XIV

EFFECTIVE DATE, TERMINATION, CHANGE AND WITHDRAWAL

Sec. 1. This Agreement shall take effect on June 1, 1975, and shall remain in force and effect until May 31, 1976, and shall continue in effect for each year thereafter unless terminated as provided for herein. Changes or amendments to this Agreement may be made as provided for herein.

Sec. 2. If either the Department or any signatory Employer Association desires to change or terminate this Agreement it shall notify the other party in writing at least ninety (90) days prior to the 31st day of May of any year subsequent to 1976. When notice for change is given, the nature of the changes desired must be specified in the notice. This Agreement shall be subject to change at any time by mutual consent of the parties hereto.

Any changes agreed upon shall be reduced to writing and signed by the parties hereto, the same as this Agreement.

The parties hereto agree that withdrawal by any signatory Employer Association to this Plan may be accomplished by serving such notice upon the other parties in writing not later than ninety (90) days prior to the first or any subsequent anniversary date of the Plan, or in accordance with the procedures set forth in Article I(a), and that such withdrawal shall constitute the termination of said signatory's obligations to this Plan and the obligations of all chapters and members affiliated with said signatory. When a notice has been served not later than ninety (90) days prior to any anniversary date, all participants affiliated with the withdrawing signatory desiring to continue participation shall be required to reaffirm their stipulation by serving voluntary written notice to the Chairman of the Board not later than the anniversary date upon which the signatory's termination is to be effective. When a notice of termination has been served in accordance with the procedures of Article I(a), all participants affiliated with the withdrawing signatory desiring to continue participation shall be required to reaffirm their stipulations by serving voluntary written notice to the Chairman of the Board not later than the date upon which the party's termination is to be effective.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the day and year first above written.

line to dwelling is work that should be done by, or under the supervision of, members of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada.

WM. L. HUTCHESON (Signed)
National Referee,
Building and Construction Trades Department

(NOTE—This in no way deletes or expunges from the records of this Department the letter of March 9, 1946, addressed to the Morris County, New Jersey, Building and Construction Trades Council or the advice contained in Vice President Hutcheson's telegram of March 27, 1946.)

Pointing, Taping and Filling of Joints on Wall Board

May 19, 1947.

Mr. Richard J. Gray, President
Building and Construction Trades Department
501 A. F. of L. Building,
Washington 1, D. C.

Dear Sir and Brother:

In the matter of the jurisdictional controversy over the pointing, taping and filling of joints on wallboard in preparing it to receive paint and other wall coverings, involving the Brotherhood of Painters, Decorators and Paperhangers of America; Bricklayers, Masons and Plasterers International Union of America and the Operative Plasterers and Cement Finishers International Association of the United States and Canada, a hearing was held in the Executive Council room, American Federation of Labor building, May 6, 1947.

Representing the organizations involved were: Harry C. Bates, President of the B. M. and P. I. U. of A.; John E. Rooney, President of the

O. P. and C. F. I. A.; L. P. Lindelof, General President, B. of P. D. and P. of A.; Joseph P. Hillock, Painters, Washington, D. C.; J. C. Moenick, Secretary-Treasurer, Painters District Council, Chicago, Ill.; Milton R. Stephens, Plasterers, Washington, D. C., and Walter Redmond, International Secretary of the O. P. and C. F. I. A.

After giving the statements made, and evidence submitted, careful consideration I have reached a conclusion and render the following decision; to wit:

When plaster material is used to do pointing and filling it shall be the work of members of the Operative Plasterers and Cement Finishers International Association of the United States and Canada—and/or—members of the Bricklayers, Masons and Plasterers International Union of America.

When adhesive materials are used it shall be the work of members of the Brotherhood of Painters, Decorators and Paperhangers of America.

Respectfully submitted,
WM. L. HUTCHESON (Signed)
Referee,
Building and Construction Trades Department.

Sitting with Referee at hearing were: Vice Presidents Wm. J. McSorley and Robert Byron of the Building and Construction Trades Department.

Exhibit 3
Annexed to Affidavit of
James J. Boyle

LOCAL UNION 1974 DRYWALL TAPERS AND POINTERS
OF GREATER NEW YORK
INTERNATIONAL BROTHERHOOD OF
PAINTERS AND ALLIED TRADES
37 UNION SQUARE WEST, NEW YORK, N.Y. 10003 • (212) 243-8500

Office of JOHN ALFARONE, Bus. Mgr.

76a

JOHN ALFARONE, Pres.
DOMINICK DeCRESCENZO, Vice Pres.
AL ZAPPY, Rec. Sec'y.
JOSEPH GIORDANO, Bus. Rep., Fin. Sec'y.
DANIEL JONES, Treas.
FRANK ALFARONE, Bus. Rep.

APR 1 1975
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March 27, 1975

Building & Construction
Trades Council
Mr. E. Cleary
211 East 43rd St.
New York, N.Y. 10017

Dear Sir and Brother:

Pursuant to the terms of the New York Plan, and on behalf of this local union, I request immediate mediation through the Greater New York Building and Construction Trades Council concerning a change of assignment of Taping work from Tapers to Plasterers on the Metro North job, at 101st Street and First Avenue, New York, New York. The builder on that job is Sovereign Construction Corp.,; the taping contractor is National Wall Systems, Inc. After starting the job on October 7, 1974 with Tapers, members of this union, the taping contractor, on March 26, 1975 re-assigned a portion of the Taping work to a Plastering Contractor, Coletti Plastering.

On two occasions, yesterday and this morning, I discussed this dispute with Frank LoPresti, Business Agent of Plasterers' Local 60. Me efforts to settle the matter were unsuccessful.

I request immediate mediation.

Fraternally yours,

John Alfarone
Business Manager

cc/ James Shay, I.B.P.A.T.
Director of Jurisdiction

Exh 3

Exhibit 4
Annexed to Affidavit of
James J. Boyle

April 2, 1975

Mr. Michael Caruso
Vice President
O P M I A
41 Orchard Farm Road
Port Washington, L.I., N. Y. 11050

Re: Metro North Apartments
New York City

Gentlemen:

This is to advise you that we have awarded buildings 2 and 3, for the joint treatment of drywall partitions to Vincent Colletti in accordance with the agreement which has been in effect since 1966, wherein it was decided that when plaster material such as Sta-Smooth is used, it belongs to the Plasterer's Union. This is our first venture in the use of this type of material, but we have seen it being used on many other jobs by such drywall contractors as Prince Carpentry, Approved Partitioners, Vidar, R & T, and others and we are most impressed with the results. We made our decision based on our feeling that this process produces better jobs more economically, and we are presently bidding many other jobs contemplating the continued use of this material.

Your Union has been most cooperative to this date and we look forward to a long and mutually beneficial relationship with the OPMIA.

Very truly yours,

NATIONAL WALL SYSTEMS

Robert E. Blank
President

REB:jc

Exh 4

Exhibit 5
Annexed to Affidavit of
James J. Boyle

Memorandum of a Conference of the Board of Mediation and Conciliation held in the rooms of the Building Trades Employers' Association on Tuesday, April 8, 1975.

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DISPUTANTS: Between Tapers, Local #1974 and Plasterers, Local #60

WORK IN QUESTION: Change of Work Assignment

JOB: 101 Street & East River Drive

GENERAL CONTRACTOR: Soverign Construction Company
SUB-CONTRACTORS: Colletti & Laguidara, Inc.
National Applicator

BUILDER & SPONSOR: Metro North

MEDIATION REQUESTED BY: Tapers, Local #1974

The parties were called before the Board of Mediation and Conciliation consisting of H. Earl Fullilove, Chairman, Board of Governors, Building Trades Employers' Association, and in the absence of Peter J. Brennan, President, Building and Construction Trades Council, Edward J. Cleary, Secretary-Treasurer, to settle the controversy by mediation or conciliation, if possible.

Mr. Fullilove presided.

PRESENT: REPRESENTING TAPERS, LOCAL #1974:

Mr. John Alfarone

REPRESENTING PLASTERERS UNION, Local #60,

Messrs. Frank Rossette
Frank LoPresti
Mike Caruso
Louis Fuvino
Tony Marullo

Exh 5

81a

The request for mediation was from the Tapers, Local #1974. The project involved contains 4 buildings, 2 of which have been completed by the Tapers. Mr. Alfarone stated that National Applicator had the contract for the installation of the wall board on all 4 buildings and that they had assigned the taping in the first 2 building to the Tapers Union. In October, 1974, the Tapers struck the job because of non-payment of the funds to the Tapers Union.

Mr. Alfarone stated that subsequently National Applicator had started to load the third building with the material for the taping of same.

Mr. Frank LoPresti stated that the work in the third building was assigned to the Plasterers by Metro North.

Mr. Alfarone stated that he was objecting to the "change of work assignment", not to the use of the material in question presently being installed by the plasterers. He stated further that the materials are presently being analyzed, and the issue of which trade was entitled to use those materials was not presently before the mediators.

Mr. Cleary and I felt that this was not a jurisdictional dispute and so advised Mr. Alfarone since his complaint concerned the change of work assignment and not jurisdiction. Mr. Alfarone requested that I so advise him by letter.

The meeting adjourned.

BUILDING TRADES EMPLOYERS' ASSOCIATION
OF THE CITY OF NEW YORK

711 THIRD AVENUE
NEW YORK, N. Y. 10017
AREA CODE 212
697-2860

H. LEE TURNER
PRESIDENT
ARTHUR T. GAFFNEY
VICE PRESIDENT
JAMES M. WATTERS, JR.
SECOND VICE PRESIDENT
ALFRED G. GEROSA
THIRD VICE PRESIDENT

H. EARL FULLILOVE
CHAIRMAN, BOARD OF GOVERNORS
JOSEPH P. CLARKE
TREASURER
WILLIAM A. CANAVAN
SECRETARY

April 10, 1975

Mr. John Alfarone
Drywall Tapers & Pointers of Gt. N.Y.,Local #1974
37 Union Square West
New York 10003

Dear Mr. Alfarone:

In accordance with your request for a letter advising the position taken at the mediation held on April 8, at the offices of the Building Trades Employers' Association between the Tapers and the Plasterers, I am enclosing a copy of the minutes of the mediation which is self-explanatory.

Inasmuch as you stated that you were objecting to the change of work assignment by the contractor on building #3, after having done buildings #1 and #2, and not objecting to the plasterers doing the work when they used plasterers materials, both Mr. Cleary and I agreed this was not a jurisdictional dispute and you would have to seek other means to settle the dispute.

With kindest personal regards, I am

Very truly yours,

H. Earl Fullilove
Chairman, Board of Governors

Exhibit 6
Annexed to Affidavit of
James J. Boyle

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WU INFOMASTER 1-017982C111 04/21/75
TWX IBPAT WSH
ZCZC001 WASHINGTON, D.C. APRIL 21
TLX 89-2705 AFL-CIO WSH
ATTN FRED J. DRISCOLL, JR., CHAIRMAN
IMPARTIAL JURISDICTIONAL DISPUTES BOARD

BT
BROTHERHOOD OF PAINTERS REQUESTS A HEARING BEFORE THE IMPARTIAL JURISDICTIONAL DISPUTES BOARD ON THE QUESTION OF ORIGINAL ASSIGNMENT OVER THE POINTING AND TAPING OF DRYWALL WHICH INVOLVES OUR TAPERS LOCAL UNION 1974 AND PLASTERERS AFFILIATED WITH THE OP&CMIA, METRO NORTH PROJECT, 101 STREET AND 102 STREET AND EAST RIVER DRIVE, NEW YORK, NEW YORK, SOVERIGN CONSTRUCTION, E. 81 STATE HIGHWAY #4, PARAMUS, NEW JERSEY, GENERAL CONTRACTOR, NATIONAL WALL SYSTEM INC., 8 INDUSTRIAL AVENUE, UPPER SADDLE RIVER, NEW JERSEY, AND COLLETTI & LAGUIDARA INC., #10 FISKELL PLACE, MT. VERNON, NEW YORK, SUBCONTRACTORS.

S. FRANK RAFTERY, GENERAL PRESIDENT
PAINTERS AND ALLIED TRADES, AFL-CIO
1750 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20006

NNNN
1302 EST
.
AFLCIO WSH

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Exh 6

Exhibit 7
Annexed to Affidavit of
James J. Boyle

LOCAL UNION 1974 DRYWALL TAPERS AND POINTERS
OF GREATER NEW YORK
INTERNATIONAL BROTHERHOOD OF
PAINTERS AND ALLIED TRADES
37 UNION SQUARE WEST, NEW YORK, N.Y. 10003 • (212) 242-8500

Office of JOHN ALFARONE, Bus. Mgr.

86a

JOHN ALFARONE, Pres.
DOMINICK DeCRESCENZO, Vice
A.L ZAPPY, Rec. Sec'y.
JOSEPH GIORDANO, Bus. Rep., F.
DANIEL JONES, Treas.
FRANK ALFARONE, Bus. Rep.

May 15, 1975

Mr. Peter J. Brennan, President
Building & Construction Trades Council
211 East 43rd Street
New York, New York 10017

RE: Drywall Tapers L.U. 1974
vs
Plasterers L.U. 60
Work in Question: Use of adhesive materials, known as "sta-smooth"

Dear Sir:

This matter came to a Mediation hearing on May 15, 1975. Representatives of Plasterers' Local 60, while denying that the material in question, "sta-smooth" is adhesive, refused to submit it to impartial chemical analysis.

In view of the position taken by Local 60, I request an arbitration hearing as provided for in Step 3 of the New York Plan.

Fraternally yours,

John Alfarone

John Alfarone
Business Manager

cc/ Mr. James Wolford, GVP, IBPAT
Mr. James Shay, Director, Dept. of Jurisdiction
Mr. Earl Fullilove, BTEA

Exh 7

Exhibit 8
Annexed to Affidavit of
James J. Boyle

I.D.T. ...
JUN 16 1975
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88a

BUILDING TRADES EMPLOYERS ASSOCIATION
OF THE CITY OF NEW YORK

711 THIRD AVENUE
NEW YORK, N. Y. 10017
AREA CODE 212
697-2860

H. LEE TURNER
PRESIDENT
ARTHUR T. GAFFNEY
VICE PRESIDENT
JAMES M. WATTERS, JR.
SECOND VICE PRESIDENT
ALFRED G. GEROSA
THIRD VICE PRESIDENT

H. EARL FULLILOVE
CHAIRMAN, BOARD OF GOVERNORS
JOSEPH P. CLARKE
TREASURER
WILLIAM A. CANAVAN
SECRETARY

June 12, 1975

Mr. John Alfarone, Business Manager
Local Union 1974, Drywall, Tapers and
Pointers of Greater New York
37 Union Square,
New York, N.Y. 10003

Dear Mr. Alfarone:

This is to inform you that the Executive Committee rendered the following decision:

165-1a

--Sta-Smooth, used for Pointing, Taping and Filling, application of.

Tapers Union Local 1974 vs. Plasterers Union Local 60 -- Metro North, 101st St. and East River Drive, Buildings No. 3 and 4, New York City.

The Executive Committee finds that the material (Sta-Smooth) used for Pointing, Taping and Filling of joints on drywall is a plaster material and is the work of the Plasterers. -- Decision of the Executive Committee, June 11, 1975.

Very truly yours,

William A. Canavan,
Secretary.

WAC:ebs

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Exh 8

BEST COPY AVAILABLE

Exhibit 9
Annexed to Affidavit of
James J. Boyle

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
F[illegible] THE CONSTRUCTION IND[illegible]STRY

90a

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

June 20, 1975

In Reply Refer to:
NY 4/21/75

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

Dear Mr Raftery:

Reference is made to your request dated June 18, 1975 for an appeal from the decision of the Executive Committee of the Building Trades Employers Association of New York City dated June 12, 1975 in a jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over the pointing and taping of drywall, Metro North project, 101/102 Street and East River, New York New York.

The Board accepts your request and will consider the Appeal at the conclusion of its regular Board meeting on July 10, 1975, approximately 2:00 p.m. If there is to be any change in this scheduled date you will be advised in advance.

Very truly yours,

FRED J DRISCOLL, JR
Chairman

FJDJR/mjk

cc: Joseph T Power - OP&CMIA
H Earl Fullilove - BTEA
Soverign Constr- contr-E. 81 State Highway #4, Paramus N J
National Wall System Inc- sub-8 Industrial Ave., Upper Saddle River New Jersey
Vincent Colletti & Co Inc-sub-#10 Fiske Place, Mt Vernon NY 10550

Exh 9

Exhibit 10
Annexed to Affidavit of
James J. Boyle

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

92a

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

July 10, 1975

In Reply Refer to: NY 4/21/75

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

Dear Mr Raftery:

Reference is made to our file NY 4/21/75 which concerns your appeal from the decision of the Executive Committee of the Building Trades Employers Association of New York City dated June 12, 1975 in the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over the pointing and taping of drywall, Metro North project, 101/102 Street and East River, New York New York, Sovereign Construction Company contractor, National Wall System Inc and Vincent Colletti and Company Inc subcontractors.

Enclosed herewith is President Joseph T. Power's letter dated July 8, 1975 wherein he has enclosed Levin & Weissman letter dated June 30, 1975 together with a "Notice of Intention to Arbitrate" served upon National Wall Systems Inc by Drywall Tapers and Pointers of greater New York Local Union 1974. As you are aware National Wall Systems Inc is a party involved in this dispute.

The Joint Administrative Committee for the Plan for Settlement of Jurisdictional Disputes in the Construction Industry "considers provisions in local collective bargaining agreements which seek to establish work jurisdiction on a unilateral basis and that inflict monetary penalties or arbitration awards against employers because of work jurisdiction are in violation of Article VII, Section 5 of the Plan." I believe that you and all other General Presidents have been so notified by the Joint Administrative Committee and the Building and Construction Trades Department.

RECEIVED JUL 11 1975

Exh 10

This "Notice of Intention to Arbitrate" involves jurisdiction and is in violation of Article VII, Section 5 of the Plan and your local union 1974 should be so notified.

In view of this violation of the Plan on the part of your affiliated local, I would appreciate your advising me whether you wish to pursue the "appeal" or the "arbitration." Until advised, the scheduled hearing for Thursday July 17, 1975 is postponed indefinitely.

Very truly yours,

FRED J DRISCOLL, JR.
Chairman

FJDJR/jl
Enclosure

cc: JOSEPH T POWER - Cement Masons
SOVEREIGN CONST CO -contr- E. 81 State Highway #4, Paramus NJ 07652
NATIONAL WALL SYSTEM INC-sub- 8 Industrial Ave., Upper Saddle River NJ 07458
VINCENT COLLETTI & CO INC-sub- #10 Fiske Place, Mt Vernon NY 10550
LEVIN & WEISSMAN-122 E. 42nd St., NY, NY 10017
H EARL FULLILOVE - BTEA of NY- 711 Third Ave., NY NY 10017

RECEIVED JUL 11 1975

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STATE OF NEW YORK
STATE BOARD OF MEDIATION

In the Matter of the Intention of

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK LOCAL UNION 1974,

a labor organization, to arbitrate a dispute with

NATIONAL WALL SYSTEMS, INC.,

an employer.

NOTICE OF INTENTION

TO ARBITRATE

S I R S:

PLEASE TAKE NOTICE that pursuant to the collective bargaining agreement entered into October 7, 1974, and effective from that date to July 31, 1977, between DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK LOCAL UNION 1974 and the above-named employer, which agreement is presently in force between them, and pursuant to Section 7503(c) of the Civil Practice Law and Rules of the State of New York, the undersigned will proceed on behalf of DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK LOCAL UNION 1974 to arbitrate the dispute presently existing between such labor organization and the above-named employer regarding alleged violation of Sections 1, 3 and 5, of the said collective bargaining agreement, as printed, upon the labor organization's complaint that the employer at its jobsite at Metro North housing project has subcontracted or re-subcontracted taping work, or work performed by members of the labor organization, to an employer not under contract with the labor organization, and in doing so has failed to furnish both labor and material complete under one contract."

RE[illegible]

Exh 11

PLEASE TAKE FURTHER NOTICE that the hearing of such arbitration will take place at the office of the New York State Board of Mediation at a time and date to be specified by a representative of the Board; and

PLEASE TAKE FURTHER NOTICE that pursuant to Section 7503(c) of the Civil Practice Law and Rules of the State of New York, unless you apply to stay the arbitration within ten days after service of this notice upon you, you will thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in cour the bar of a limitation of time; and

PLEASE TAKE FURTHER NOTICE that in default of your appearance a default judgement will be taken against you, and the undersigned will proceed to present evidence and request that an award be made in favor of DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK LOCAL UNION 1974 requiring the employer to comply with the collective bargaining agreement and awarding the said labor organization such damages and/or further and different relief as may be appropriate.

Yours, etc.,

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK LOCAL UNION 1974

BY:

JOHN ALFARONE
37 Union Square West
New York, N.Y. 10003

(212) 242-8500

RE[illegible] 1973

IMPAI AL JURISDICTIONAL DISPU ES BOARD
FOR THE CONSTRUCTION INDUSTRY

96a

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

July 18, 1975

In Reply Refer to: NY 4/21/75

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

Dear Mr Raftery:

Reference is made to our file NY 4/21/75 which concerns your appeal from the decision of the Executive Committee of the Building Trades Employers Association of New York City dated June 12, 1975 in the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over the pointing and taping of drywall, Metro North project, 101/102 Street and East River, New York New York, Sovereign Construction Company contractor, National Wall System Inc and Vincent Colletti and Company Inc subcontractor.

Your letter dated July 16, 1975 was reviewed with the Board Members at the regular meeting of the Impartial Jurisdictional Disputes Board on Thursday July 17, 1975. The Board Members concurred with this opinion of the Chairman which was conveyed to you on July 10, 1975 as follows: "This notice of Intentionsto Arbitrate involves jurisdiction and is in violation of Article VIII, Section 5 of the Plan and your Local Union should be so notified."

Again, until this office is advised that the arbitration has been dropped, the hearing of your appeal is postponed indefinitely.

Very truly yours,

FRED J DRISCOLL, JR.
Chairman

FJDJR/jl
cc: JOSEPH T POWER - Plasterers
SOVERIGN CONST CO-contr-E.81 State Highway #4 Paramus NJ 07652
NATIONAL WALL SYSTEM INC-sbu-8Industrial Ave, Upper Saddle NJ, 07458
VINCENT COLLETTI & CO INC-sub-#10 Fisher Place, Mt Vernon NY 10550
LEVIN & WEISSMAN-122 E. 42nd St., New York New York 10017
H EARL FULLILOVE-BTEA of NY- 711 Third Ave,New York NY 10017

RECEIVED JUL 21 1975

Exhibit 11
Annexed to Affidavit of
James J. Boyle

STATE OF NEW YORK
STATE BOARD OF MEDIATION

In the Matter of the Intention of

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK LOCAL UNION 1974,

a labor organization, to arbitrate a dispute with

NATIONAL WALL SYSTEMS, INC.,

an employer.

NOTICE OF INTENTION TO ARBITRATE

S I R S:

PLEASE TAKE NOTICE that pursuant to the collective bargaining agreement entered into October 7, 1974, and effective from that date to July 31, 1977, between DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK LOCAL UNION 1974 and the above-named employer, which agreement is presently in force between them, and pursuant to Section 7503(c) of the Civil Practice Law and Rules of the State of New York, the undersigned will proceed on behalf of DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK LOCAL UNION 1974 to arbitrate the dispute presently existing between such labor organization and the above-named employer regarding alleged violation of Sections 1, 3 and 5, of the said collective bargaining agreement, as printed, upon the labor organization's complaint that the employer at its jobsite at Metro North housing project has subcontracted or re-subcontracted taping work, or work performed by members of the labor organization, to an employer not under contract with the labor organization, and in doing so has failed to furnish both labor and material complete under one contract."

RECEIVED

Exh 11

PLEASE TAKE FURTHER NOTICE that the hearing of such arbitration will take place at the office of the New York State Board of Mediation at a time and date to be specified by a representative of the Board; and

PLEASE TAKE FURTHER NOTICE that pursuant to Section 7503(c) of the Civil Practice Law and Rules of the State of New York, unless you apply to stay the arbitration within ten days after service of this notice upon you, you will thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in cour the bar of a limitation of time; and

PLEASE TAKE FURTHER NOTICE that in default of your appearance a default judgement will be taken against you, and the undersigned will proceed to present evidence and request that an award be made in favor of DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK LOCAL UNION 1974 requiring the employer to comply with the collective bargaining agreement and awarding the said labor organization such damages and/or further and different relief as may be appropriate.

Yours, etc.,

DRYWALL TAPERS AND POINTERS OF
GREATER NEW YORK LOCAL UNION 1974

BY:

JOHN ALFARONE
37 Union Square West
New York, N.Y. 10003

(212) 242-8500

RE[illegible] 1973

Exhibit 12
Annexed to Affidavit of
James J. Boyle

IMPARTIAL JURISDICTIONAL DISPUTES BOARD FOR THE CONSTRUCTION INDUSTRY

101a

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

July 18, 1975

In Reply Refer to: NY 4/21/75

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

Dear Mr Raftery:

Reference is made to our file NY 4/21/75 which concerns your appeal from the decision of the Executive Committee of the Building Trades Employers Association of New York City dated June 12, 1975 in the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over the pointing and taping of drywall, Metro North project, 101/102 Street and East River, New York New York, Sovereign Construction Company contractor, National Wall System Inc and Vincent Colletti and Company Inc subcontractor.

Your letter dated July 15, 1975 was reviewed with the Board Members at the regular meeting of the Impartial Jurisdictional Disputes Board on Thursday July 17, 1975. The Board Members concurred with this opinion of the Chairman which was conveyed to you on July 10, 1975 as follows: "This notice of Intentionsto Arbitrate involves jurisdiction and is in violation of Article VIII, Section 5 of the Plan and your Local Union should be so notified."

Again, until this office is advised that the arbitration has been dropped, the hearing of your appeal is postponed indefinitely.

Very truly yours,

FRED J DRISCOLL, JR.
Chairman

FJDJR/jl
cc: JOSEPH T POWER - Plasterers
SOVERIGN CONST CO-contr-E.81 State Highway #4 Paramus NJ 07652
NATIONAL WALL SYSTEM INC-sbu-8Industrial Ave, Upper Saddle NJ, 07458
VINCENT COLLETTI & CO INC-sub-#10 Fisher Place, Mt Vernon NY 10550
LEVIN & WEISSMAN-122 E. 42nd St., New York New York 10017
H EARL FULLILOVE-BTEA of NY- 711 Third Ave, New York NY 10017

Exh 12

Exibit 13
Annexed to Affidavit of
James J. Boyle

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

103a

August 7, 1975

In Reply Refer to: NY 4/21/75

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

Dear Mr Raftery:

Reference is made to our file NY 4/21/75 which concerns your request for an appeal from the decision of the Executive Committee of the Building Trades Employers Association of New York City dated June 12, 1975 in the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over the pointing and taping of drywall, Metro North project, 101/102 Street and East River, New York New York, Soveriegn Construction Company contractor, National Wall System Inc and Vincent Colletti and Company Inc subcontractor.

On July 18, 1975, I advised you that your tapers Local 1974 was pursuing an arbitration in New York City which was deemed to be a violation of the Plan Article VII, Section 5. At that time we advised that the appeal would be postponed indefinitely until we were advised that the arbitration had been dropped.

Enclosed herewith is a copy of Building Trades Employers Association of New York City letter dated August 4, 1975 which enclosed a copy of Levin & Weissman letter dated July 29, 1975 together with a judicial subpoena served upon H. Earl Fullilove, Chairman of the Building Trades Employers Association Board of Governors to appear at the New York State Mediation Board on August 4, 1975.

As you are aware, Article VII, Section 2(a) indicates your prior agreement, and this includes Local 1974, that <u>all</u> cases, disputes or controversies involving jurisdictional disputes shall be resolved through the Plan and not in some other forum chosen by your local affiliate.

Exh 13

The acceptance of an appeal from a decision of a Local Board is discretionary. In view of the fact that your local 1974 persists in ignoring the Plan and the Procedural Rules of the Board, the previous acceptance of your request is revoked and now denied. Decision 185-1a dated June 12, 1975 as rendered by the Executive Committee of the Building Trades Employers Association of New York City will remain as written.

There is no necessity for further action by the Impartial Jurisdictional Disputes Board in this jurisdictional dispute. We are returning the transcript of the hearing to the Building Trades Employers Association of New York City with this letter.

Very truly yours,

FRED J DRISCOLL, JR.
Chairman

FJDJR/jl
Enclosure

cc: JOSEPH T POWER - Plasterers (w/encl)
SOVEREIGN CONST CO-contr- E. 81 State Highway #4, Paramus NJ 07652
NATIONAL WALL SYSTEM INC-bus-8 Industrial Ave, Uppper Saddle River
VINCENT COLLETTI & CO INC-sub-#10 Fiske Place, Mt Vernon NY 10550
LEVIN & WEISSMAN-122 E. 42nd St., New York New York 10017
H EARL FULLILOVE -BTEA of NYC - 711 Third Ave, New York NY 10017

Exhibit 14
Annexed to Affidavit of
James J. Boyle

ROBERT A. GEORGINE, President
PETER FOSCO, 1st Vice President
JOHN H. LYONS, 2nd Vice President
HUNTER P. WHARTON, 3rd Vice President
THOMAS F. MURPHY, 4th Vice President

S. FRANK RAFTERY, ... Vice President
CHARLES H. PILLARD, 6th Vice President
JOSEPH T. POWER, 7th Vice President
HAROLD J. BUOY, 8th Vice President
MARTIN J. WARD, 9th Vice President
WILLIAM SIDELL, 10th Vice President

Building and Construction Trades Department

AMERICAN FEDERATION OF LABOR — CONGRESS OF INDUSTRIAL ORGANIZATIONS
815 SIXTEENTH ST., N.W., Suite 603 • WASHINGTON, D. C. 20006
(202) District 7-1401

106a

TO ALL LOCAL UNIONS AND LOCAL AND STATE
BUILDING AND CONSTRUCTION TRADES COUNCILS

STATEMENT OF ALL GENERAL PRESIDENTS
OF INTERNATIONAL UNIONS AFFILIATED WITH THE
BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

Your attention is directed to Article VII, Section 5 of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry, which reads as follows:

> "Sec. 5. It shall be a violation of this Agreement for any Local Union, International Union, Employer or Employers' Association to enter into any agreement, resolution or stipulation that attempts to establish any jurisdiction which deviates from the spirit and intent of the Agreement and Rules and Regulations of the Plan."

It is our joint view that certain procedures have developed which have the result of diminishing the effectiveness of the overall Plan. These procedures include the extensive enumeration of all the jurisdictional contentions of the particular union and the establishment of a procedure for arbitration between the employer and Union A which is involved in a jurisdictional dispute with Union B. The arbitration procedures are intended to exclude the other union (B) from participating in the arbitration. In a word, it amounts to the procedure of a friendly suit in which the real adverse party is not present.

Exh 14

If this practice continues to be utilized, it would have the effect of creating chaos in the industry.

We are going through trying times and we are endeavoring to maintain the individual position of each and every international union affiliated with the Department. There has been a great deal of effort and time expended on the development of the Joint Board and its successor, the Impartial Jurisdictional Disputes Board. These institutions in the industry have now been in effect for more than twenty-seven years. They serve a most useful purpose in establishing a method for settling jurisdictional disputes without strikes. Each and every local union must recognize its obligations under the procedures established by the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry and the provisions of Article X of the Constitution of the Department, which reads as follows:

> "All jurisdictional disputes between or among affiliated National and International Unions and their affiliated Local Unions and employers shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the future by the Department for the settlement of jurisdictional disputes. Said present plan or any other plan adopted in the future shall be recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions."

There must be a sincere effort on the part of all to make the Plan work. It is in this spirit that all local unions affiliated with International Unions comprising the Building and Construction Trades Department are required to bring their collective bargaining agreements into com-

pliance with the provisions of Article VII, Section 5 of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.

Andrew T. Haas
International Association of Heat and Frost Insulators and Asbestos Workers

Hunter P. Wharton
International Union of Operating Engineers

Harold J. Buoy
International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers

J. H. Lyons
International Association of Bridge, Structural and Ornamental Iron Workers

Thomas F. Murphy
Bricklayers, Masons and Plasterers International Union of America

Peter Fosco
Laborers' International Union of North America

William Sidell
United Brotherhood of Carpenters and Joiners of America

Kenneth M. Edwards
Wood, Wire and Metal Lathers' International Union

Charles H. Pillard
International Brotherhood of Electrical Workers

Pascal-Di James
International Association of Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile Helpers and Finishers, Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers

R. Wayne Williams
International Union of Elevator Constructors

S. Frank Raftery
International Brotherhood of Painters and Allied Trades

Joseph T. Power
Operative Plasterers' and Cement Masons' International Association

Roy E. Johnson
United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association

Edward J. Carlough
Sheet Metal Workers' International Association

Martin J. Ward
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

Exhibit 15
Annexed to Affidavit of
James J. Boyle

Minutes of the General Executive Board Meeting

Miami Beach, Florida

General Executive Board in session.

Meeting was called to order at 9 A.M. by General President S. Frank Raftery. Those present were General President Emeritus L. M. Raftery, General Secretary-Treasurer Michael DiSilvestro, General Vice Presidents Joseph Cerveny, Frank J. O'Connor, James Wolford, Jack T. Cox, Guy W. Leber, Robert J. Petersdorf and M. H. Eckles. Others present were Executive Assistant to the General President Harry Martin, General Representative A. L. Monroe, Director of the Department of Education, Apprenticeship and Training William Duval, Administrative Assistant to the General Secretary-Treasurer John Lazzara and O. T. Satre.

General President Raftery reviewed with the Board the agenda and related activities to be carried out during the sessions of the General Executive Board meeting.

He reported to the Board that he had appointed a Committee to examine the potential, feasibility and the means to be used by the Brotherhood in addressing itself to the proposition of organizing and regaining job opportunities in the repaint field, under the Chairmanship of General Vice President Petersdorf, consisting of Director of the Department of Organization Robert Welch, Second District Director Kenneth Buckley, Fifth District Director of Organizing Malcolm Prater, Sixth District Director of Organizing James Cox, Executive Secretary Arthur Colasanto of District Council 20 of Westchester County, New York and Business Representative Harold Rohr of Local Union 802 of Madison, Wisconsin.

General President Raftery reviewed with the Board some of the programs being developed by the Brotherhood in conjunction with the Department of Housing and Urban Development (HUD). Included is a program for the removal of lead based paint coatings from housing units and the accomplishment of painting and application of seamless flooring and other types of work that fall within the jurisdiction of the Brotherhood of Painters and Allied Trades. He also reviewed some of the problems the Brotherhood has recently experienced in some locations with local Housing Authorities which fall under the jurisdiction of HUD and how these problems have been resolved through continuing contacts and rapport with personnel of the Department of HUD. He reported that the Assistant to the Secretary of the Department of HUD, Charles Muntain, and the Painting Specialist for the Department of HUD, George Erickson, would appear later before the Board to explain some of the programs.

General President Raftery reported to the Board that the transition in the office of the General Secretary-Treasurer from O. T. Satre to Michael DiSilvestro has been accomplished very smoothly and effectively. He expressed his thanks to everyone for the cooperation extended in accomplishing this change.

General President Raftery asked General Vice President Petersdorf to review with the Board the "Report and Recommendations of the Committee on Organizing Repaint Work." General Vice President Petersdorf reported that the Committee had met for three days and that the report presented to the Board is the result of many long hours of discussions. Copies of the "Report and Recommendations" were distributed to the Board members and reviewed. The Committee's report outlined the many facets connected with organizing and the efforts to recapture and retain employment opportunities for the Brotherhood's membership in the repainting field. Included were the means and methods of organizing and negotiations that would provide the necessary conditions for elimination of obstacles that heretofore have prevented the Brotherhood's District Councils and Local Unions from organizing or retaining repaint work and to accomplish the objectives

its voting position on the National Joint Board for the Settlement of Jurisdictional Disputes on April 1, 1972.

He reported that contract maintenance continues to have problems due to the ever increasing spread between the in-plant rates and the outside construction rates that are payable under the terms of the maintenance agreement. In several localities the wage rates have been frozen under the terms of the agreement for a specified period of time while other areas have agreed to a percentage of construction rates for maintenance work. If contract maintenance is to continue, many changes in the existing wage structure will have to be made to bring wages into a competitive position. It may be necessary to give some relief on the strict jurisdictional lines.

General President Raftery reported to the Board that due to the continuing problem with the OP&CMIA and the BMPIU that on January 28, 1972, he had directed letters to Mr. William J. Cour, Chairman of the National Joint Board for the Settlement of Jurisdictional Disputes, Mr. Joseph T. Power, President of the OP&CMIA and Mr. Thomas F. Murphy, President of the BMPIU, to the effect that the IBPAT will not participate in any hearings before the National Joint Board on work covered in the Memorandum of Understanding between the IBPAT, OP&CMIA and the BMPIU. Also, that the IBPAT will continue to insist that the disputes procedures as set forth in the Memorandum of Understanding be fully recognized and implemented. Further, that by their actions (OP&CMIA and BMPIU) of January 21, 1972, requesting that the Board process requests for decision of jurisdictional disputes that are clearly covered by the Memorandum of Understanding dated November 29, 1961, they had in fact abrogated the Memorandum. The text of the three letters was read to the Board for its information.

Following discussion, the General Executive Board unanimously approved of the General President's actions regarding the National Joint Board for the Settlement of Jurisdictional Disputes, the OP&CMIA and the BMPIU.

General Vice President Eckles reported to the Board on the conditions and activities of the Special Branches and Canadian District Councils and Local Unions. He stated that in spite of some very bad economic conditions in Canada, the Local Unions have continued to make progress due to some very progessive organizing programs and the success in obtaining a degree in the glass industry.

General President Raftery informed the Board that there is a problem which often arises regarding "job following" by members who clear out of their home Local Union and clear into another Local Union where their home town employer has a job or an upcoming job. By this means, the employer is relieved of paying subsistence and travel pay and deprived the local area members of employment opportunities. The practice evades the 75-25 clause and the payment of the higher rates of wages where they exist in the home town area. He asked General Vice President Eckles and General Counsel Barr to study this subject and make suggestions and recommendations regarding it.

General Counsel Barr reported to the Board on his legal activities for the last three months. He reviewed the legal cases that are being considered in the Courts and those cases that are before the National Labor Relations Board in which the IBPAT and its affiliates are involved. He also reported on other significant matters affecting the entire Labor Movement that have developed in the Courts and the Congress.

There being no further business to come before the Board, the meeting was adjourned.

Proceedings of the General Executive Board

APPEALS

Note:

SUSTAINED means the appeal has been upheld and the decision of the Trial Board reversed.

NOT SUSTAINED means the appeal has not been upheld and the decision of the Trial Board has been affirmed.

CASE REMANDED means the case is sent back to the Trial Board for further proceedings, usually because there was a procedural defect or lack of due process in the original trial.

118348—Of Brother Clifton LaRock of Local Union 577, Cambridge, Massachusetts, from the action of the Trial Board of Local Union 257, Springfield, Massachusetts, fining him $150 on charge #1, $150 on charge #2, and $100 on charge #3.

Not Sustained. Total fine excessive—reduced from $400 to $200.

118349—Of Brother Robert Whitney of Local Union 39, Lowell, Massachusetts, from the action of the Trial Board of Local Union 257, Springfield, Massachusetts, fining him $150 on charge #1 and $150 on charge #2.

Not Sustained. Penalty on charge #1 set aside.

118358—Of Brother M. D. Harrison of Local Union 53, Dallas, Texas, from the action of the Trial Board of District Council No. 38, Atlanta, Georgia, fining him $300.

Not Sustained. Fine excessive—reduced to $100.

118360—Of Brother William Lee Santos, Sr., of Local Union 83, San Rafael, California, from the action of the Trial Board of District Council No. 8, San Francisco, California, fining him $200, with $100 held in abeyance pending no further violations, plus previous fines now due and payable.

Not Sustained.

118361—Of Brother Erik G. Hansen of Local Union 83, San Rafael, California, from the action of the Trial Board of District Council No. 8, San Francisco, California, fining him $200, with $100 held in abeyance pending no further violations.

Not Sustained.

118362—Of Brother Norman J. Wehrle of Local Union 970, Charleston, West Virginia, from the decision of

Exhibit 16
Annexed to Affidavit of
James J. Boyle

TRADE-AGREEMENT

between

Drywall Tapers and Pointers of Greater New York Local Union 1974, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO

and

Metropolitan New York Dry Wall Contractors Association, Inc.

OCTOBER 7, 1974

to

JULY 31, 1977

INDEPENDENT AGREEMENT

between

LOCAL UNION 1974

and

Employer

Exh 16

144a

TRADE AGREEMENT

between

Drywall Tapers and Pointers of Greater New York Local Union 1974, affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO

and

Metropolitan New York Dry Wall Contractors Association, Inc.

THIS AGREEMENT, hereinafter designated as the Trade Agreement, dated this 7th day of October, 1974 by and between the Metropolitan New York Drywall Contractors' Association, Inc., hereinafter designated as the "ASSOCIATION," and Drywall Tapers and Pointers of Greater New York, Local Union 1974, affiliated with the International Brotherhood of Pointers and Allied Trades, AFL-CIO, hereinafter designated as the "UNION."

WITNESSETH as follows:

WHEREAS, the parties hereto desire to establish terms and conditions upon which journeymen tapers and pointers and apprentices, shall work for members of the ASSOCIATION, hereinafter designated as "EMPLOYERS" (it being agreed that the word "JOURNEYMAN" means an experienced pointer or taper or one who has completed one of the approved apprenticeship program provided herein),

NOW THEREFORE, the parties hereto agree as follows:

ART. I, SECTION 1. The terms of this Trade Agreement shall govern all tapers' and pointers' work as hereinbelow

defined performed within New York City and parts of Nassau County by any EMPLOYER as hereinabove defined. Tapers' and Pointers' work is defined to include, but not be limited to, the following.

(a) all work operations after the initial unloading of the drywall finisher's material to the job site including the distribution to the point of application; all preparatory work of spotting, pointing ,taping, finishing and sanding of joints and surfaces; all protective coverings prior to the application of finish materials; erection, moving and dismantling of all scaffolding; taping and finishing of all gypsum drywall, metal beads and/or moldings; spackling and pointing of unpainted concrete ceilings; all application of hand rolled texture, skip trowel texture, thin wall surfacing texture and application of all other adhesive materials; applications of proper masking and cleanup procedures; the troweling of textured materials; and the operation and care of all tools and equipment used in connection with any of the foregoing.

SECTION 2. No Employer will execute any agreement with a union other than Local Union 1974 in connection with work covered by this Agreement unless directed to do so by Government order or regulation.

SECTION 3. (a) The ASSOCIATION obligates itself for its members and the UNION obligates itself for its members that they and each of them in good faith will live up to and conform with all the provisions of this TRADE AGREEMENT and to all rules, regulations, requirements and procedures promulgated under and pursuant to the terms of this Agreement, provided, however, that the ASSOCIATION shall not be obligated to take any action to

require compliance with the terms of the Trade Agreement on the part of any person or firm which has been expelled from or has validly resigned from the ASSOCIATION except as a prerequisite for the reinstatement of such member.

(b) Neither party to this Agreement shall discriminate against any employee with respect to employment or union membership by reason of race, creed, color or national origin.

(c) All Journeymen and Apprentices who are members of the UNION at the time of hiring shall remain members in good standing as a condition of continued employment. Should any Journeyman or Apprentice employed by the Employer not be a member of the UNION at the time of hiring, he shall be required to become a member of the UNION by the eighth day after starting to work in the Union section of the industry and he shall remain a member in good standing as a condition of continued employment. The Employer shall be free to hire Journeyman or Apprentices from any source. However, no Journeymen or Apprentice shall seek employment through an Employment Agency, nor shall any Employer use the services of an Employment Agency in hiring Journeymen or Apprentices. Any Employer hiring a Non-Union Journeyman or Apprentice shall first report the same to the UNION and the said Non-Union Journeyman or Apprentice shall, before commencing work, register with the UNION.

ART. II. SECTION 1. WAGES: The rate of wages for all Journeymen covered by this Agreement shall be as follows: for the period commencing October 7, 1974 and terminating July 31, 1975, $8.85 per hour; for the period commencing August 1, 1975 and terminating January 31, 1976, $9.35 per hour; for the perio commencing Febru-

116a.

against him before the Joint Board shall be outside the protection of this section until such time as he is in compliance.

In the case of an Employer who has failed to comply with a decision of the Joint Board, the UNION may order his Journeymen and registered Apprentices to cease work until he is in compliance on any and all jobs.

ART. XXIV. SECTION 1. No more favorable conditions shall be granted to other Employers than are provided for in this Trade Agreement.

SECTION 2. Journeymen shall not work for Employers who are not in contractual relations with Local Union 1974 or any Council or Local Union affiliated with the Brotherhood, it being understood that Journeymen may work directly for the City and State of New York, and the Federal Government. Contractual relations as used in this section shall mean a written agreement containing substantially all of the provisions of this Trade Agreement.

SECTION 3. The Union shall not issue a permit to Journeymen to do any work on any Union buildings.

ART. XXV. JURISDICTIONAL DISPUTES: It is mutually agreed between the parties that in the event of disputes between trades and disputes relative to questions of jurisdiction of trade, the parties will abide by previous decisions as to jurisdiction published in the latest issue of the B.T.E.A. Handbook, commonly known as "The Green Book."

It is mutually agreed between the parties hereto that disputes between trades and disputes relative to jurisdiction of trades not covered by decisions in the latest issue of the

B.T.E.A. Handbook, commonly known as "The Green Book," shall be adjusted in accordance with the principles of the New York Plan for the Settlement of Jurisdictional Disputes as set forth in the Joint Arbitration Plan of the New York Building Trades as adopted on July 9, 1903 and amended on April 22, 1905, and as thereafter amended, except to the extent that Section 3 of said Arbitration Plan requires the Employer to employ only members of the Union directly or indirectly through sub-contractors or otherwise.

Pending determination of any dispute under the New York Plan for the Settlement of Jurisdictional Disputes, as stated in the previous paragraph, the members of the Union shall remain at work on the project without change in status.

ART. XXVI. The term of this Agreement shall be for the period commencing October 7, 1974 and ending July 31, 1977.

Negotiations for a new agreement shall commence not later than the month of April, 1977 and the Union shall present its proposals, if any, during that month.

ART. XXVII. Without recognizing the applicability of the National Labor Relations Act to the Building and Construction Industry, the parties agree that they will abide by the provisions of said Act, and by any amendments thereto of general application or specifically applicable to the Building and Construction Industry, and any and all provisions of this Agreement which may be in conflict with the said Act shall be deemed to be modified and amended accordingly so as to conform to and comply with the said Act or any amendments thereto.

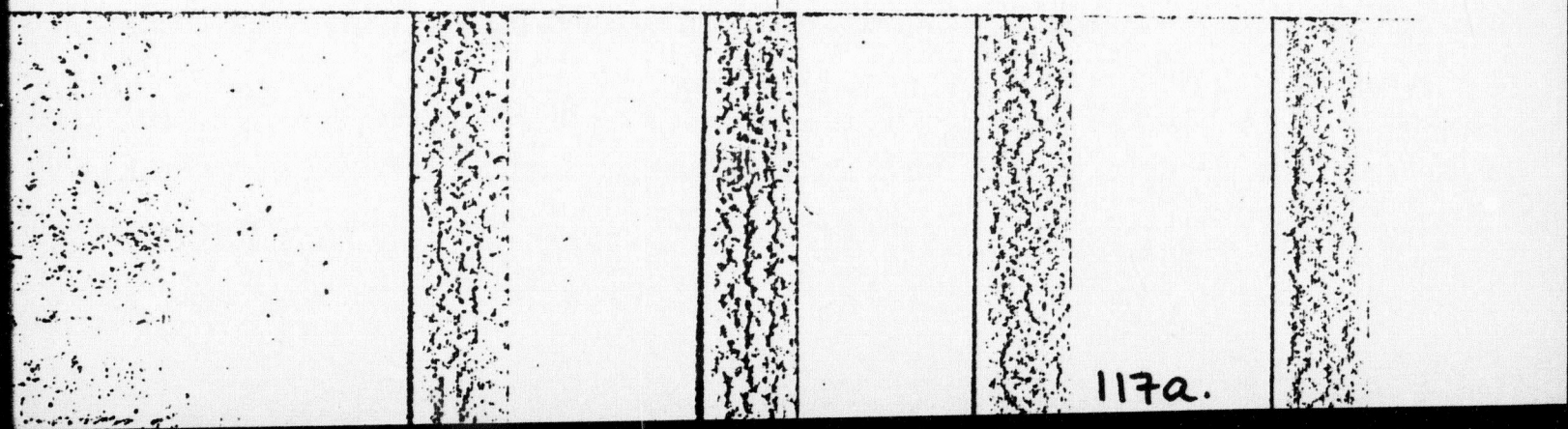

Exhibit 17
Annexed to Affidavit of
James J. Boyle

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter
Of
The Arbitration of a Certain Controversy
Between

NOTICE OF PETITION

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, I.B.B.A.T.

Index No._____

Petitioner,

-and-

OPERATIVE PLASTERERS' LOCAL 60,
O.P.& C.M.I.A.U.S.C.,

Respondent.

S I R S :

PLEASE TAKE NOTICE that upon the annexed petition of DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, verified on the 8th day of September, 1975, by John Alfarone, its President, and upon the papers annexed thereto as exhibits, and upon all the papers and proceedings herein, an application will be made to a Special Term, Part I of this Court, to be held at the Court House, located at 60 Centre Street, New York, New York, on the 22nd day of September, 1975, at 9:30 of that day or as soon thereafter as counsel can be heard, for a judgment pursuant to CPLR 7511 Vacating and setting aside the award of June12, 1975 or

Exh 17

the executive committee of the Building Trades Employers' Association of New York City, sitting as an arbitral body, in arbitration proceedngs between the Petition er and Respondent, on the grounds that (i) there was misconduct in procuring the award; (ii) certain members of the arbitral body appointed as neutrals were partial; (iii) the arbitral body so imperfectly executed its power that a final and definite award upon the subject matter submitted was not made; and (iv) the arbitral body failed to follow the procedure of Article 75, CPLR; and for such other, further and different relief as may be just, proper and equitable, together with the costs and disbursements of this proceeding.

PLEASE TAKE FURTHER NOTICE that an answer and supporting affidavits, if any, shall be served at least 5 days before the aforesaid date of hearing.

Petitioner designates New York County as place of trial. The basis of venue is that Petitioner and Respondent both maintain their principal offices in such county, at 37 Union Square West and 80 East 11th Street, respectively, and arbitral proceedings were conducted in such county.

Yours, etc.,

BURTON H. HALL
Attorney for Petitioner
401 Broadway
New York, N.Y., 10013
(212) 431-9114

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Affidavit of Michael Canuso in Opposition to
Motion for a Preliminary Injunction and
other and Alternative Relief

ASSIGNED TO JUDGE METZNER

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, -and- CHARLES LONG, PASQUALE DE ROSA, ALBERT ZAPPY, HARRY EDWARDS AND ANTHONY DEL GAIS, each of them individually and on behalf of all persons, members of Local 1974 working or seeking work as drywall tapers within the jurisdiction of such labor organization, similarly situated, Plaintiffs, -against- OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, and OPERATIVE PLASTERERS LOCAL 60, Defendants.	Civil Action File No. 75-Civ-4289 CMM AFFIDAVIT IN OPPOSTION TO MOTION FOR A PRELIMINARY INJUNCTION AND OTHER AND ALTERNATIVE RELIEF

STATE OF NEW YORK)
SS:
COUNTY OF NEW YORK)

MICHAEL CANUSO, being duly sworn, deposes and says:

1. I reside at 41 Orchard Farm Road, Port Washington, New York 11050.

2. At all times, hereinafter mentioned and for a long time prior to that date, the Affiant has been President and Business Agent of Operative Plasterers Local 852 (hereinafter "Local 852"), a duly chartered Local of Operative Plasterers and Cement Masons' International Association of the United States

BEST COPY AVAILABLE

and Canada (hereinafter "International Association", maintaining its principal office at 136-21 41st Street, Flushing, New York 11354.

3. I am fully familiar with all of the facts and circumstances pertaining to this action and the allegations herein, and the pleadings and proceedings heretofore had herein, and submit this Affidavit in Opposition to the Notice of Motion and Affidavit in Support thereof, sworn to the 28th day of August, 1975 for Preliminary Injunction and for other and alternative relief made by Plaintiffs herein.

4. I repeat, reiterate, reallege, adopt, confirm and ratify each and every statement contained in the Affidavit of James J. Boyle, Vice President of the International Association, duly sworn to the 15th day of September, 1975 contained in paragraphs numbered 1 through 25, inclusive, and each and every statement contained in the Affidavit of H. Earl Fullilove, Chairman of the Board of Governors of the Building Trades Employers Association of the City of New York, duly sworn to the 16th day of September, 1975, both filed with this Court in the above captioned action, as if set forth at length herein.

5. I have read with care the pleadings, particularly the Affidavit of John R. Alfarone, President and Business Manager of Plaintiff, Drywall Tapers and Pointers of Greater New York Local 1974 (hereinafter "Local 1974"), duly sworn to the 28th day of August, 1975, wherein certain acts of active concert and participation in violation of agreements, coercion, overreaching of jurisdiction and bargaining rights, etc. are alleged to have been committed

by Officers and members of Local 852 and other party defendants herein. While under heavy restraint of counsel, and with the hope of avoiding ad hominen and acrimonious argument, I must confine myself to the categorical and unequivocal denial of these wild accusations. I wish to state that the inuendos, slurring insinuations and sly references set forth in said Affidavit before this Court are most uncalled for.

6. Local 852 has always sought swift, simple, expedient and frugal resolution of the issues herein. In fact, it should be noted, that a review of the chronology of events and proceedings described in detail in the aforementioned Affidavit of James J. Boyle before this Court, indicates that Plaintiffs have already had in depth consideration of the matters at hand in numerous forums. One may only conclude that as a matter of strategy, Plaintiffs are going from one forum to another in search of a determination to their satisfaction. Plaintiffs had - and still have - a viable means to resolve the alleged dispute with Defendant through effective internal contractual machinery. However, through their own action outside of the contractual machinery, Plaintiffs have been precluded from further proceedings. But the proceedings already had, clearly demonstrate, that Plaintiffs have had a full determination of the jurisdictional dispute herein and have instituted this action because of dissatisfaction with the prior ruling. The ground rules having been set, Plaintiffs should be bound to the forum of their initial choice and should be precluded from further proceedings in other forums.

7. Despite the attempt of Plaintiffs to becloud the issues at hand with conclusory statements, inconsistent with the

facts, it is perfectly clear that the real issue before the Court is the dispute whether "Sta-Smooth" is a plaster or adhesive material. This question was the subject matter of various proceedings heretofore had in which it was decided that "Sta-Smooth", used for pointing, taping, and filling of joints on drywall, is a plaster material and is the work of plasterers. The Minutes of the hearing before the Executive Committee of the Building Trades Employers Association on June 4, 1975, between Local 1974 and Operative Plasterers Local 60 (hereinafter Local 60) is annexed hereto as Exhibit 1. The decision of the Executive Committee, holding as aforesaid, dated June 11, 1975, is annexed hereto as Exhibit 2. The ruling of the Executive Committee is in conformance with the Decision of Record dated May 19, 1947, contained in the Green Book on Pages 144 and 145, annexed as Exhibit 2 to the aforementioned Affidavit of James J. Boyle, and is, in large part, based on the laboratory analysis of "Sta-Smooth" and related plaster products. See Exhibit "3" annexed hereto.

8. Having sought and failed to have "Sta-Smooth" considered adhesive material rather than plaster, Plaintiffs seek new grounds for contesting the same point. Locals 852, 202, and 60 never recognized the 1961 Memorandum of Understanding and the practice of the construction trades in the greater New York area has been to follow and abide by the Decisions of Record contained in the Green Book and the ruling of the Impartial Jurisdictional Disputes Board and the Building Trades Employers Association. "Sta-Smooth" having been declared in the aforesaid forums to be plaster and the work of plasterers, it is Plaintiffs, not Defendants, who seek by this action to change the jurisdiction of such work to their bailiwick. Such a change of jurisdiction by legal process

would be a clear and flagrant violation of the rights of all members of Locals 852, 202, and 60 who would, as consequence, suffer a severe loss of earning opportunities. This is a situation the Court should not countenance.

9. Locals 852, 202, and 60 have tried to utilize the proceedings we thought were available to us and by which we were bound, yet every day we find ourselves being accused by Plaintiffs in a new forum of attempting to deviate from the letter or spirit a intent of some agreement, rule, decision, regulation, etc. Each reasoned determination in one forum appears to lead Plaintiffs to seek another determination in yet a further forum. I respectfully request that this Court dismiss with prejudice the relief sought by Plaintiffs herein and serve notice upon Plaintiffs that further duplicative proceedings and forum shopping will be enjoined.

WHEREFORE, it is respectfully requested that the relief set forth in the Notice of Motion and Affidavit in Support thereof sworn to the 28th day of August, 1975, for a preliminary injunction and for other and alternative relief, be denied in all respects with prejudice, and for such other and further relief as to this Court may seem just and proper.

MICHAEL CANUSO

Sworn to before me this 16th
day of September, 1975.

Notary Public

No. 31-7509295
Qualified in New York County
Commission Expires March 30, 1976

Exhibit 1
Annexed to Affidavit of
Michael Canuso

- :

DRYWALL TAPERS L.U. 1974 :

-vs- :

PLASTERERS L.U. 60 :

WORK IN QUESTION: USE OF ADHESIVE MATERIALS, KNOWN AS "STA-SMOOTH" :

- :

HELD AT: 711 Third Avenue
New York, New York

HELD ON: June 4, 1975
10:00 A.M.

CHAIRMAN: H. EARL FULLILOVE

STENOGRAPHER: LILLIAN SCHINDLER

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EXECUTIVE COMMITTEE

H. Earl Fullilove, Chairman

Bernard Bierman

William B.F. Drew

James M. Watters, Jr.

William A. Canavan, Sec'y.

Arthur T. Gaffney

H. Lee Turner

Fred J. Driscoll, ex officio

Fred Munder

REPRESENTATIVES

L.U. 1974

John Alfarone

Carl Blum

L.U. 60

Frank G. Rosetti

James J. Bayh

Michael Canuso

Carmine Maueto

Mario Provenzano

Frank Lo Presti

Anthony Maulli

Louis Evino

John J. Tuni

Vincent Colletti

James J. Boyle

background as to what has developed to bring about the dispute today, for the benefit of the executive committee, which has not been involved in these mediations, such as you and I and some of the other people here. So we allow a lot of latitude here.

MR. ROSETTI: I am willing to allow the latitude, but I want it understood this arbitration is strictly on the fact of the material involved; nothing else. That is what I was questioning. I just want -- if you want to give him the latitude, it is fine with me.

CHAIRMAN FULLILOVE: Yes, we will allow you the same latitude.

MR. ROSETTI: Okay.

CHAIRMAN FULLILOVE: Proceed.

MR. ALFARONE: At this point I would also like for the record to show a memorandum of understanding that was agreed to by the operative plasterers and cement masons international association of United States and Canada, bricklayers, masons, and

Plasterers' International Union of America and Brotherhood of Painters, Decorators and Paper Hangers of America, dated November 29, 1961, and I would like to go to paragraph or section, where it says, point F. Pointing, Taping and Texturing Drywall Surfaces.

1. All pointing and taping of drywall, regardless of material used, is Painters' work providing the drywall surfaces are not to receive plaster, acoustical or imitation acoustical finishes. The application of texturing to drywall surfaces is the work of Painters where paint materials are used.

MR. ALFARONE: I would like to submit this memorandum for the record.

I would also like to submit the agreement. Not the agreement, the ruling by William L. Hutcheson, dated May 19, 1947, where it says, "When adhesive materials are used, it shall be this work of members of the Brotherhood of Painters, Decorators and Paperhangers of America."

This is a job controversy between the Plasterers International and Painters over a particular job site. This goes back to May, 1947. I would like to submit a copy of this for the record.

Tuesday, 25th of March, I was informed by my steward that plasterers moved into the third building. This building was sheet rocked and was being sheet rocked at that time by National Wall System. Building number three, building number four, was sheet rocked by National Wall System. Building number one was sheet rocked by National Wall System. Building number two was sheet rocked by National Wall System. My membership was preparing and had prepared building number three with material to start building number three before we stopped the job for the simple reason of non-payment of welfare.

At that time, I communicated with the building and construction trades and asked for mediation, which we did have a hearing, and I hope that the minutes of

the mediation are inserted into these proceedings. I was told that the New York City building and construction trades, I was told at the time that I had to seek other means to hear the grievance of the tapers local. I then appealed to the National Joint Board and in the interim period I wrote a letter to U.D.C. I will make that a matter of record, the reply.

I would submit the original, which I want back, and a copy of this letter, that I would like to have recorded in the minutes.

Also, attached to that letter was two pages of a description of sta-smooth by Gold Bond, which I will also want inserted, the original, and there are copies.

"Description: Sta-Smooth is recommended for use with Gold Bond Tapered Edge Wallboard and Gold Bond Sta-Smooth Wallboards. For additional protection against ridging or beading, Sta-Smooth Wallboard is recommended.

Sta-Smooth has a working life of approximately 90 minutes from the time it is mixed. It is used for applying Gold Bond Joint Tape and for complete joint finishing, including corner bead, casing beads and fasteners. It is also recommended for complete joint finishing with Gold Bond Q-W Tape over Sta-Smooth Wallboard.

RECOMMENDATIONS FOR USE: IMPORTANT: DO NOT mix with any other material. DO NOT mix brands. Gold Bond Sta-Smooth, Joint Tape and Gypsum Wallboard are designed for use with each other. For assured results use Gold Bond Products exclusively. MAINTAIN PROPER HEAT AND VENTILATION during application (in cold weather maintain a minimum of 55°F.) and until hardened or dry. Avoid extremely fast or slow drying conditions. DO NOT mix more material than can be used in 75 minutes. Use only clean containers, tools and water. Mixing equipment, containers and tools must be cleaned after each mix. Fresh batches must be kept

free of previous batch; otherwise working life will be shortened. DO NOT add water if mix begins to thicken or harden. STORAGE LIFE varies with climatic conditions. With good storage: High Humidity - 6 months; Other - up to 12 months.

MIXING: Mix no more material than can be used in 75 minutes. For ease of cleaning, a plastic container is recommended. Mix at the rate of 15 to 16 quarts to the 50 pound bag. Add material to clean water and mix free of lumps. Allow to stand 5 minutes and remix. If a thinner or thicker mix is desired, add water or powder sparingly. When power mixing is used, the motor speed should not exceed 600 RPM since high speed and prolonged mixing will shorten the working life.

APPLICATION: Taping: Apply Gold Bond Sta-Smooth 6"-8" wide evenly and fully over the Wallboard joints (including end or "butt" joints) completely filling the joint. Center Gold Bond Joint Tape over the joint and embed. Due to the low

shrinkage of Sta-Smooth, avoid heavy fills under the tape. Smooth down and remove excess, using care to leave ample material under the tape with the surface as near level as possible. Apply Sta-Smooth to no more joints than can be taped and properly embedded before it starts to stiffen.

After the joints have been taped, apply the first coat over corner beads and nail or screw heads.

FINISHING: When hardened, apply a coat of Sta-Smooth over the flat joints. Feather all edges and finish the surface smooth and level. Apply the second coat on nail or screw heads and finish one side of inside corners.

After the previous material has set apply a finish coat over all flat joints, corner beads, nail or screw heads and finish the other side of inside corners.

DECORATION: Painting - use a good quality wall paint applied in two coats (primer and finish or two coats finish)

according to recommendations of the paint manufacturer. Texture - use Gold Bond Texture Products as directed. Wallpaper - prime with a latex, alkyd semi-gloss or varnish size prior to papering.

Since job conditions and application methods are beyond our control, National Gypsum Company can only assume responsibility for the performance of this product when used in accordance with these instructions and our published specifications and technical literature.

Complies with Federal Specification SS-J-570A and ASTM Specification C475-64. Also complies with New York City Board of Standards and Appeals Resolution Cal. #709-39-SM for use as Joint Treatment."

MR. ALFARONE: The mediation which was held in this office, I believe it was April 8th --

CHAIRMAN FULLILOVE: May 8th and May 15.

MR. ALFARONE: May 8th?

CHAIRMAN FULLILOVE: Right.

MR. ALFARONE: I would like to read the transcript of the minutes.

"The request for mediation was from the Tapers, Local #1974. The project involved contains 4 buildings, 2 of which have been completed by the Tapers. Mr. Alfarone stated that National Applicator had the contract for the installation of the wall board on all 4 buildings and that they had assigned the taping in the first 2 buildings to the Tapers Union. In October, 1974, the Tapers struck the job because of non-payment of the funds to the Tapers Union.

Mr. Alfarone stated that subsequently National Applicator had started to load the third building with the material for the taping of same.

Mr. Frank LoPresti stated that the work in the third building was assigned to the Plasterers by Metro North.

Mr. Alfarone stated that he was objecting to the change of work assignment, not to the use of the material in question presently being installed by the plasterers. He

stated further that the materials are presently being analyzed, and the issue of which trade was entitled to use those materials was not presently before the mediators.

Mr. Cleary and I felt that this was not a jurisdictional dispute and so advised Mr. Alfarone since his complaint concerned the change of work assignment and not jurisdiction. Mr. Alfarone requested that I so advise him by letter.

The meeting adjourned."

MR. ALFARONE: Also, I would like to read into the minutes, the mediation of May 15th.

"After preliminary discussion among all parties of the propriety and procedure of this issue within the authority of the New York Plan for the Settlement of Jurisdictional Disputes, it was agreed to proceed with the subject matter on its merits.

Mr. Alfarone contended that the disputed material, "Sta-Smooth", was an adhesive material and as such within the juris-

dictional purview of Tapers, Local #1974. He based his contention on a May 19, 1947, decision of Referee William L. Hutcheson, entitled "Pointing, Taping and Filling of Joints on Wall Board" (copy attached to these minutes) contained in the national Green Book. Mr. Alfarone further submitted a laboratory report (copy also attached) from Konstandt Laboratories, Inc., which he maintained proved that the material in question was an adhesive.

Mr. Rosetti and other representatives of Plasterers Union, Local #60, did not accept the laboratory report as conclusive and maintained that in their opinion and that of the contractor involved on these jobs, the disputed material was of a type which was traditionally applied by their Local. It was also noted that technological advances had been made since the time of the decision of Mr. Hutcheson, and that the distinction between plastering and taping materials was not clear in all cases.

Mr. Fullilove recommended in an attempt

to resolve the issue without resorting to arbitration that both parties obtain from the job sites samples of the material in question; jointly submit it to a mutually agreed upon laboratory for analysis; and abide by the rulings thereof.

Mr. Alfarone agreed to this procedure.

Representatives of Local 60, asserted this would not be possible without direction from their International Union which was not likely to be forthcoming.

No resolution of the issue being likely, the meeting adjourned, and Mr. Alfarone indicated that he would take into consideration applying for arbitration in this matter.

The meeting adjourned.

William A. Canavan, Secretary"

MR. ALFARONE: One of the objections that Mr. Rosetti made at this meeting was because of the analysis of Konstandt Laboratory, and he read on the top "analysis of "Gold Bond" compound," which I will submit the original and copy of the original

and it don't tell him anything.

I am now ready to show you a bag of material that has no trade name whatsoever on it. All it has on it is, "Gold Bond." These two, this bag and another bag that was submitted, this bag only has Gold Bond on it; Gold Bond Products. This is the bag. And another bag was taken from the 101st Street job and Second Avenue. If the contractor wants the money, I will pay him for it.

MR. BOYLE: Mr. Chairman, is this from the job that we are disputing right now?

MR. ALFARONE: That is from the job. I want to show the product which I will show you another chemical analysis of the product, that this same company was using the same product. But what they did, smartly, they took a plain ordinary bag and stenciled on it,"Sta-Smooth Plaster."

MR. ROSETTI: When you say "they," whom do you mean?

MR. ALFARONE: I don't know who all. I know it is very deceitful.

MR. ROSETTI: Mr. Chairman, let's get down to the facts.

MR. ALFARONE: Gentlemen, I am talking.

MR. BOYLE: A point of information, please?

CHAIRMAN FULLILOVE: Mr. Boyle?

MR. BOYLE: A point of information. He said he got this from this particular job and it had to be done by the manufacturer, it had to come from the manufacturer, if he got it from this job. So I would like to say, he did take this from this particular job and it was delivered by the Gold Bond Company in the bag in which you have right there: "Sta-Smooth Plaster."

MR. ALFARONE: The second bag -- I will elaborate deeper -- while we were on strike, what was happening, these bags come in, multi-lined bags, with a trade name on the outside. To camouflage and fool the tapers union, they were ripping the outer bag off, just like I can rip the outer bag of this off, and you would have a plain paper bag. So this way we did not

know any trade name and when we submitted it originally for analysis by the chemist, we go to find out it was a product similar to USG, Durabond 90. But that bag itself was not taken from that job. It was taken from another job, but that was the bag and that is the stuff that was being used on the strike, and you can see in the last two or three months, they have come out, or the last two or three weeks they have come out with another product, and this product says, "Sta-Smooth Compound." And I would like to submit all the things, all the writing on the bag, and that is the newest bag. It is out about three, four weeks, from Gold Bond Products. Now, at this time I will submit the chemical analysis of these products.

MR. BOYLE: Mr. Chairman, if I may?

CHAIRMAN FULLILOVE: Yes.

MR. BOYLE: This material is not being used on this particular job.

MR. ALFARONE: This one here.

CHAIRMAN FULLILOVE: The one that says

"Sta-Smooth."

MR. BOYLE: I think we are discussing the materials which are being used on this particular job, and I don't feel you can take something from some place else and bring it in and use it as evidence before your Board.

CHAIRMAN FULLILOVE: I understand him to say these bags came from the job.

MR. BOYLE: Did this material come from that job?

MR. ALFARONE: Let me clarify it for you, Mr. Boyle.

MR. BOYLE: This one here?

MR. ALFARONE: Let me --

MR. BOYLE: Then I would like to say, it should be presented here. We are talking about a particular job. It is a jurisdictional job -- no more than you can use pictures from that building here to discuss a dispute on this one, I don't think it should be used.

CHAIRMAN FULLILOVE: The two brown bags are from the job?

MR. ALFARONE: No, sir. The second brown bag is from the job. The only thing I showed you is the evolution of this, how it grew up. It come first in a brown bag with Sta-Smooth letters, then in a bag with no markings on, then just recently, they come out with Sta-Smooth bag. But, Mr. Fullilove --

MR. ROSETTI: One question. I would like to say, when he says "they," I would like to know who he means by "they." Is it the plasterers, the manufacturers? Let's bring out who he means?

MR. ALFARONE: Would you like my opinion?

MR. ROSETTI: I don't want your opinion.

MR. ALFARONE: I say "they," because John don't know who "they" is.

MR. ROSETTI: I want that inserted for the record. He is accusing people.

MR. ALFARONE: You are still using products belonging to the painters.

MR. ROSETTI: That is your opinion.

CHAIRMAN FULLILOVE: The analysis was made of this bag?

MR. ALFARONE: That is correct. I have an analysis of all three, but I will submit only one.

CHAIRMAN FULLILOVE: That applies to that job?

MR. ALFARONE: But, if they bring up the agrument, I will submit all three.

I would like to bring to your attention, Mr. Fullilove, from the onset of this argument, going back to November and before the plasterers have always maintained their product, they are using, is Sta-Smooth Plaster. The argument in it, also from Mr. Colletti himself, is material being used is Sta-Smooth compound. I could submit the letter from which I did submit from UDC. You call me a liar? I'll bring the letter out, my friend.

MR. ROSETTI: Mr. Colletti is here. He will be able to tell you himself.

MR. COLLETTI: It is Sta-Smooth compound.

MR. ALFARONE: Regardless,I will find the letter. What they have always maintained here is that the materials they use are Sta-Smooth, but I feel that proceedings here, I can't

introduce it, because it didn't come from the job. But I want to make it a matter of record that that is here and I do have chemical analysis for the information of this committee, if they so request it. Okay?

First let me introduce the letter. Here is a copy of it. I will show you the original. This is the original, Mr. Fullilove.

CHAIRMAN FULLILOVE: This is an analysis that he is submitting here from the Konstandt Laboratories, Inc.

MR. ALFARONE: Will you please read it while I am looking?

CHAIRMAN FULLILOVE: This is Gold Bond compound, and it says:

"An unopened multi-wall paper bag of a white powdered material was submitted for chemical analysis.

The bag bore an imprint of "Gold Bond" and the name of the manufacturer: Gold Bond Building Products, Division of National Gypsum Co., Buffalo, New York.

The material was said to be used as a

taping compound.

The chemical analysis gave the following results (on a weight basis).

Water Soluble Matter, %	50.1
Fillers, %	11.5
Calcium Sulfate,% (Gypsum)	38.4

The water soluble matter was identified as "gelatin".

The chemical dictionary - seventh edition - published by Reinhold Publishing Corp. N.Y. 1966, defines "gelatin" as follows:

A protein obtained from collagen by boiling skin, ligaments, tendons, bones etc. with water. Its production differs from that of animal glue in that the raw materials are selected, cleaned and treated with special care so that the resulting product is cleaner, purer and generally clearer and lighter in color than (animal) glue.

The uses of gelatin are, among other, adhesives.

Based on the above analysis we are of the opinion that the sample submitted contains adhesives, as a major constituent."

MR. ALFARONE: I would submit that.

Now, just from that chemical analysis, read it and read it carefully. You will find that these materials belong to the Brotherhood of Painters, based on the past practice, based on it historically, the amount of work that the Brotherhood of Painters has been doing in New York, previous to our strike. Never before did the plasterers do any drywall taping.

Now, the question: Do we recognize the plasterers, whether they can do taping, drywall taping, and I say to the Board: Yes, we do recognize them. Do we recognize that veneer plastering belongs to the plasterers? We say yes, it does. With veneer plastering, when they cover the full board, when the board is to receive full plaster, we do recognize, and the tapers don't do anything about it. Right at this moment, in the McGraw Hill Building, they are texturing a ceiling. My steward advised me this morning what was being done, and I told him that belongs to the plasterers

union. They are texturing a dry ceiling in the McGraw Hill Building at the present time. I do recognize the jurisdictional lines, all the agreements that have been made previous to my becoming a business manager of this local union. What is going on on this job? What is going on on this job, they are taping the board. Any one of us -- and I will pay for transportation to anyone who wants to go see for themselves -- go to this job and you tell me what they are doing.

Now, to get back to Mr. Vincent Colletti. He sent a letter to Fred Driscoll, April 24, 1975. It is addressed to the Impartial Jurisdictional Disputes Board. It reads:

"Gentlemen: Reference your letter of April 21, 1975, we herewith inform you we have historically and traditionally assigned our plastering work to members of the O.P. & C.M.I.A. or the B.M. & P.I.U.

All of the material we are using at the building in question is a plastering material (stay smooth) by National Gypsum Company.

We refer to your attention, green book decision of May 19, 1947 regarding Painting, Taping and filling of joints on Wall Board: "When plaster material is used to do pointing and filling it shall be the work of members of the Operative Plasterers and Cement Finishers International Association of the United States and Canada - and/or - members of the Bricklayers, Masons and Plasterers International Union of America."

We also wish to inform you that our firm is not stipulated to the Jurisdictional Disputes Board. Very truly yours, Vincent Colletti & Co., Inc."

MR. ALFARONE: I will submit this letter. I have no copies of this letter, because I didn't figure I'd have to submit it. So all along, they contend that they are not using sta-smooth products or they don't want this bag submitted. But it is sta-smooth stamped, stamped sta-smooth, made by Gold Bond. But I readily accept their contention that bag wasn't taken on the job and I remove and not submit it.

I think it is about time that the plasterers recognize the jurisdiction of the tapers in New York City, like they have done previous to August 1, 1974, and they have recognized it for the past 20 years previous to that date. As far as I am concerned, I think someone is being misled. I don't know who, but the job in question, up on 101st Street, was started by the tapers and should be finished by the tapers, for the simple reason, the materials that are being used belong to the Brotherhood of Painters. The job that was being done was thousands upon thousands of hours by my membership, and until we had a question of payments to the fund, that is when the plasterers moved in. I don't think that Board or any other Board would allow it, but I await your decision.

I am completed, Mr. Fullilove. I thank you gentlemen.

CHAIRMAN FULLILOVE: Any questions? Frank?

MR. DRISCOLL: I would like to ask this

question: Since March 8, whatever the date is this year, on this job, Metro North is taping work being done now by plasterers?

MR. ALFARONE: Yes, sir.

MR. DRISCOLL: The second question is: With the taping that the plasterers are doing, your contention is the type of material being used classifies whether it is tapers or plasterers work?

MR. ALFARONE: Not only that, it is my contention the job was assigned to a contractor that I had a contract signed with the Drywall Tapers Union.

MR. DRISCOLL: My other question is: Are the plasterers now being employed by the National Wall System, or what?

MR. ALFARONE: I don't believe so. My information tells me that National Wall System, who was the drywall contractor on the job, supposedly had -- I don't know for a fact -- information I can't get, subcontracted to Vincent Colletti Company, a plastering concern.

CHAIRMAN FULLILOVE: Any other questions?

MR. DRISCOLL: I am getting it. He is a sub-contractor of National Wall Systems?

MR. ALFARONE: I believe so.

MR. GAFFNEY: When you say the plasterers are taping, are they actually putting roll out tape on the joints in addition to this material?

MR. ALFARONE: They are using a gauze with a glue on it. The gauze sticks on to the drywall. They are doing the same way as the tapers. Historically, we have always put gauze on walls. The painters union always taped with gauze. Many years ago, we taped with onionskin, and it changed throughout the years. We have used quite a few different materials to tape with. We still do. We use gauze, ordinary tape, paper tape. There is certain tape that has steel in it.

MR. GAFFNEY: Are there any samples available of this particular material you are using, taping called gauze?

MR. ALFARONE: I can send for a car up there to get some.

the subsequent building are your jurisdiction or theirs?

MR. ALFARONE: Is our jurisdiction.

The first thing I would like to address myself to is the piece of paper which was so elegantly handed up here, pertaining to my contract. On August 1, 1974, Drywall Tapers and according to the local of New York, went to strike for economic reasons, not for jurisdiction. Also, the piece of paper that was handed up here does not have my letterhead and I believe this was put together by the contractors or the plasterers in their imagination in the contract that I have signed my jurisdiction -- it has not changed. I do not wish it to change. We were on strike primarily for health reasons, which was the key issue, because materials that we have long been using -- and if you have been following Dr. Irving Sellcoff, you will find out about asbestos. Go way back, to each '69 tapers in the City of New York who have been working in New York over 20 years have asbestosis

in our lungs because of the materials that were made previous to the ready mixed compounds.

So as far as I am concerned, this is an imagination and only something to put a handle on their raid, because if you would analyze the statement made by Mr. Boyle, you would see that I did talk to him. He did agree he was raiding my jurisdiction during the strike, and suddenly he changed his mind and he continued to raid and they are raiding up until this date. My contract does not change my jurisdiction and I do not wish it. But I would like to emphasize, as far as I am concerned, health was the primary issue. More so than money. The economics were the second factor in my negotiations.

I'd also like to discuss plaster. All of us know what plaster is. Plaster is a rock, and I agree the way that they have plaster or make plaster, they pulverize it first. They dry it to take out the water and by adding water to it, it comes back

to its original state. To apply plaster, they must have something for plaster to stick to. They have wire lath, they have wood lath, they have rock lath, and without these things plaster would not stick. It could not adhere to anything. It eventually pops or falls off. The materials that they are using, in order to stick on drywall, must have a glue in them. Now, I hope, that this chemist that I did talk to and I did tell him exactly what I am looking for, because I am not experienced and eloquent as Mr. Boyle is. I did ask him that I have a jurisdictional fight and I am bringing a certain material -- by the way, I never seen him. I just talked to him on the phone -- and what I want done is, "Does this material have adhesive properties in it?" He did ask me what it is used for and I told him for drywall taping.

The report that he gave, there again, I am lucky I got out of high school. I am not a chemist and I doubt very much if Mr. Boyle is a chemist. An actor, but not a

chemist. He knows and I know that the encyclopedia that this chemist has been taking it from, he wasn't reading the Book of Knowledge, because if I thought that I should go to the library to the Book of Knowledge, it could have save me a few hundred dollars. But unfortunately, I had to hire a chemist, who I didn't know, whom I never had any reason to use, but unfortunately, I had to use, and cost the Local a considerable amount of money. I do have chemical analysis of all different types of material, but I am only using and taking the one that has been used on the job and submitted.

The job in question is being painted, to answer the question of the man. Let me explain something about the application of the materials. I defy anyone here to go up on the job site, like I say, be my guest -- I will pay all expenses -- and physically see what is going on. I also, Mr. Fullilove, like I did before, and I am willing now, to submit the bags that were taken from the job

with Gold Bond markings on it, by impartial people for chemical analysis. I have said that before and I will say it again. These gentlemen know, just as well as I know, that compounds cannot stick on the wall without having an adhesive in it. They can talk about gelatins, they can talk about cows' hoofs. They can talk about buttons, they can talk about anything they want to talk, but I defy anybody to get plaster and put plaster on these walls and leave it stay for a period of a couple of weeks. It would just fall off. Without adhesive materials, it cannot stay on the wall. And that is what the book indicates, adhesive materials.

Now, just like he submitted, I can go into my briefcase and give you a whole line of decisions. I can leave the book here, because I have another one home, as far back as 1973, in a memorandum of agreement between the Operative Plasterers and the Brotherhood of Painters, which was the first thing I submitted. So I say to this Board,

if they want, they should get first-hand knowledge to see what is going on at the job. Also, they should recognize the fact that we were on the job, our drywall contractor was putting up the job, is still putting up the drywall and only because we struck the job for non-payment to the welfare fund, did they run to the plasterers and the plasterers welcomed our contractors, for the simple reason they are trying to get a handle on a union. They did it before, they will do it again. The only people who can stop them from raiding the jurisdiction of 1974 is this Board itself. I feel the decision will be made which I will abide by.

CHAIRMAN FULLILOVE: Thank you.

MR. BLUM: My name is Carl Blum, special representative, International Brotherhood of Painters and Allied Trades.

John, there was a strike. The strike started August 1, 1974.

MR. ALFARONE: Right.

MR. BLUM: When was it terminated?

Affidavit of H. Earl Fullilove
in Support of Motion to Dismiss, etc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG, et al., individually, etc.,

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al.,

Defendants.

75 Civ. 4239 CLH

AFFIDAVIT

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

H. EARL FULLILOVE, being duly sworn, deposes and says:

I am the Chairman of the Board of Governors of the Building Trades Employers' Association of the City of New York (BTEA), an association of general and specialty contractors who perform the major portion of all building construction work in the City of New York. I submit this affidavit in connection with the above entitled matter in order to clarify the position of the BTEA and its executive committee members who sat as an arbitration panel in a recent jurisdictional dispute between Drywall Tapers and Pointers of Greater New York, Local 1974, as petitioner and Operative Plasterers' Local 60, O.P. & C.M.I.A.U.S.C., respondent.

I am fully familiar with all of the proceedings had therein, since as Chairman of the Board of Governors of the BTEA, I am also Chairman of the Executive Committee and I participated in said hearing.

The arbitration referred to herein was conducted under the procedures of The New York Plan, a plan adopted in 1903 by the BTEA and the Building and Construction Trades Council of Greater New York (Council), of which both unions are members, to amicably settle jurisdictional disputes of work assignments. The first step in the procedure is for the business agents of the competing unions to meet and try to resolve their differences. Failing this, the aggrieved party can request mediation which in this particular instance was held on May 15, 1974 at the request of the Tapers Union. Participants in the mediation proceeding were the contesting unions and their representatives. As Chairman of the BTEA, I participated together with Edward J. Cleary, Secretary of the aforementioned Council, designated by the President of the Council, Peter J. Brennan. Mediation in this particular case was not conclusive -- the Tapers Union claiming that the work in dispute was covered by a memorandum of understanding dated November 29, 1961 between the parent international unions of the Tapers and the Plasterers as well as a third international union. This memorandum of understanding allegedly awarded the work to the Tapers. However, in the mediation proceeding, the Plasterers Union disavowed the agreement, claiming that it

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had been abrogated by the parties subsequent thereto. Inasmuch as the parties could not agree among themselves as to whether or not the memorandum of understanding was in full force and effect, the matter was scheduled for an arbitration hearing which is the third step in the procedure under The New York Plan.

An arbitration hearing was conducted on June 4, 1975 at the offices of the BTEA at 711 Third Avenue, New York, New York before the Executive Committee of said BTEA, at which time all parties were present including witnesses, et al. After hearing the witnesses for the parties, the Executive Committee acting as an arbitration panel voted that the material in question was of a plaster type and accordingly and in line with a past decision of the Referee of the Building and Construction Trades Department rendered on May 19, 1947 wherein the Referee ruled that "when plaster material is used to do pointing and filling it shall be the work of the members of the Operative Plasterers and Cement Finishers International Association of the United States and Canada -- and/or -- members of the Bricklayers, Masons and Plasterers International Union of America", the Executive Committee ruled that the work in question belonged to the Plasterers Union. Said Decision No. 135-1a was entered in the BTEA Green Book under The New York Plan as a decision of record.

I am advised that an appeal to the Impartial Jurisdictional Disputes Board for the Construction Industry

located in Washington, D. C. was subsequently denied. 167a

H. Earl Fullilove

H. Earl Fullilove

Sworn to before me this

16th day of September, 1975.

Notary Public, State of New York

#6295157

Qualified in Westchester County

Commission Expires

Affidavit of James J. Shay
in Support of Motion for
Preliminary Injuction

9/26/75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, etc.,

-and-

CHARLES LONG, et al., individually, etc.,

75 Civ. 4289 CMM

Plaintiffs,

-against-

OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION, ETC., et al.,

Defendants.

DISTRICT OF COLUMBIA: ss

JAMES J. SHAY, being duly sworn, deposes and says:

1. I am Director of Jurisdiction of the International Brotherhood of Painters and Allied Trades, AFL-CIO (hereinafter IBPAT), and have held that post since September 1966. In such post I have charge of the Department of Jurisdiction of IBPAT and the records pertaining to jurisdictional disputes between IBPAT and other unions (including defendant Operative Plasterers and Cement Masons (hereinafter OPCMIA) are under my control. I also have under my control all records dealing with jurisdictional disputes that have been submitted to the Impartial Jurisdictional Disputes Board or to its predecessor, the National Joint Board for the Settlement of Jurisdictional Disputes. Indeed, as part of my duties as Director of Jurisdiction of IBPAT, I served as a member of the National Joint Board for a period of over three years.

2. I am fully familiar with the facts and proceedings recounted herein. I make this affidavit in opposition to defendants' motion to dismiss the complaint herein and in support of plaintiffs' motion for a preliminary injunction.

3. I have read the affidavits of James J. Boyle and Michael Canuso (International Vice Presidents of OPCMIA), and H. Earl Fullilove (Chairman of Building Trades Employers' Association of New York City (hereinafter BTEA)) submitted by defendants herein, and discover therein many inaccuracies and misstatements of fact. This affidavit will attempt to correct and straighten out the more serious of these. In particular, with the aid of documents appended hereto as exhibits, this affidavit will point out:

(i) that the Memorandum of Understanding (or Agreement) of November 29, 1961 is and remains in full force and effect between the three Internationals signatory to it and is binding upon all the subordinate bodies of the three Internationals, including the local unions parties to this action;

(ii) that plaintiffs have attempted in good faith to exercise all private or "inter-union" remedies available to them. Any attempt to pursue such remedies further would be futile;

(iii) that Local 1974's request for arbitration concerning a violation of its collective bargaining agreement was not in fact a violation of any provision, policy or agreement of the Building and Construction Trades Department or of the General Presidents of the affiliated unions, and it was never intended by the latter that such a request be considered a violation; and

(iv) that Mr. Boyle is in error when he suggests that the OPCMIA or any of its local unions had any collective bargaining relationship with the Metropolitan New York Dry Wall

Contractors' Association, Inc., the association representing drywall contractors in New York City, prior to the latter part of 1974.

A. The November 29, 1961 Agreement.

4. Attached hereto as Exhibit "A" is a copy of the Agreement or Memorandum of Understanding entered into between three International Unions -- the IBPAT, the OPCMIA, and the Bricklayers, Masons and Plasterers International Union -- on November 29, 1961. That Agreement establishes the jurisdictional boundaries between the three International Unions and, in so doing, supersedes all previous determinations and agreements relating to such boundaries. Indeed, this fact is plainly stated on the inside cover of the Agreement and that statement has been accorded full weight and authority. (See: Exhibit "C," second paragraph.)

5. The 1961 Agreement is and remains in full force and effect between the Internationals ever since November 29, 1961 and is binding upon all subordinate bodies of each of the three Internationals, including the local unions that are parties to this suit. For that reason I am surprised to find in paragraph 8 of Mr. Canuso's affidavit, a suggestion that the three defendant local unions "never recognized" the 1961 Agreement. As subordinate bodies of the OPCMIA they are bound by it and it governs any jurisdictional dispute between any of them and any locals of IBPAT or of the Bricklayers. Indeed the New York Plan, as set forth in the letter from BTEA Chairman Fullilove to Conrad J. Olsen, in the letter of May 29, 1974, attached to Exhibit 17 of Mr. Boyle's affidavit, plainly states (at the top of page 3):

> "The BTEA recognizes all agreements between two or more international unions which settle or dispose of jurisdictional claims between such unions and which are recognized by the Building and Construction Trades Department through their established procedures."

6. The Impartial Jurisdictional Disputes Board has consistently recognized the November 29, 1961 Agreement as binding upon local unions of the three signatory Internationals and as governing jurisdictional disputes between any local of one and any local of another. To illustrate this, I annex hereto copies of ten decisions handed down by the Board from August 24, 1973 to November 11, 1973, involving disputes concerning drywall taping that had arisen between locals of the OPCMIA and locals of the IBPAT; specifically:

(i) a decision of August 24, 1973, annexed hereto as Exhibit "B";

(ii) a decision of September 10, 1973, annexed hereto as Exhibit "C";

(iii) a decision of September 14, 1973, annexed hereto as Exhibit "D";

(iv) another decision of September 14, 1973, annexed hereto as Exhibit "E";

(v) a decision of September 21, 1973, annexed hereto as Exhibit "F";

(vi) another decision of September 21, 1973, annexed hereto as Exhibit "G";

(vii) a decision of September 24, 1973, annexed hereto as Exhibit "H";

(viii) a decision of October 5, 1973, annexed hereto as Exhibit "I";

(ix) a decision of November 2, 1973, annexed hereto as Exhibit "J"; and

(x) another decision of November 2, 1973, annexed hereto as Exhibit "K".

Each of the ten decisions annexed as exhibits as recited above ruled that the work, which involved pointing and taping of

drywall to receive paint and/or wall covering (i.e., wallpaper), was governed by the November 29, 1961 Agreement and therefore "shall be assigned to painters."

7. On December 4, 1973, the Joint Administrative Committee, which governs the Impartial Jurisdictional Disputes Board, notified the Board to "defer action" on requests for job decisions, made under the November 29, 1961 Agreement, relating to disputes between IBPAT and OPCMIA in connection with pointing and taping of drywall surfaces or patching and plastering of concrete ceilings. A copy of its letter of December 11, 1973, so notifying the General Presidents of the three Internationals, is annexed hereto as Exhibit "L."

8. By letter of January 8, 1974, IBPAT's General President protested the Joint Administrative Committee's "defer action" decision. The Chairman of the Joint Administrative Committee, Frank Bonadio, acknowledged his letter by letter of January 15, 1974, and reported that "The Operative Plasterers' and Cement Masons' International Association of the U.S. and Canada have also protested the action...." Copies of the two letters are annexed hereto as Exhibits "M" and "N."

9. Mr. Bonadio's letter of January 15, 1974 (Exhibit "N") advised that the protests of IBPAT and OPCMIA would be brought to the Joint Administrative Committee's attention at its next regular meeting. No further correspondence has been received by IBPAT concerning this issue from the Joint Administrative Committee. Nor has the Joint Administrative Committee withdrawn or modified its direction to the Impartial Jurisdictional Disputes Board to "defer action." That direction, therefore, is still in force and bars the Impartial Jurisdictional Disputes Board from hearing, considering or deciding disputes arising under the 1961 Agreement concerning drywall taping or pointing work.

10. In the Spring of 1974, request was made to the Impartial Jurisdictional Disputes Board by OPCMIA for a decision concerning plastering of walls and ceilings. At substantially the same time, a request was made to the Board by IBPAT for a decision concerning pointing and taping of drywall. By letters of June 26, 1974, the Board denied both requests, saying that "in accordance with the action of December 4, 1973 of the Joint Administrative Committee, the Impartial Jurisdictional Disputes Board will continue to defer action on this request for a job decision." Copies of the two letters are annexed hereto as Exhibits "O" and "P."

11. The Joint Administrative Committee's direction to the Impartial Jurisdictional Disputes Board does not, and did not, affect the status of the November 29, 1961 Agreement. Since December 4, 1973, the Bricklayers and the OPCMIA have continued to make demand upon IBPAT to recognize their rights under the November 29, 1961 Agreement and IBPAT, upon being persuaded that their grievances were supported by that Agreement, has complied. In particular: Shortly after the Joint Administrative Committee's direction to the Impartial Jurisdictional Disputes Board, the Bricklayers made demand upon me, as Director of Jurisdiction of IBPAT, to look over pictures and reports of certain work involving the grinding and patching of concrete holes prior to painting, which work they asserted was awarded to them by the November 29, 1961 Agreement. I did so, and agreed that it was within their jurisdiction under the 1961 Agreement. Accordingly, the two area representatives were notified that the work belonged to the Bricklayers pursuant to the 1961 Agreement. The letter of the Bricklayers' First Vice President, setting forth these facts, is annexed hereto as Exhibit "Q." And as recently as January 6, 1975, the OPCMIA

made a demand upon IBPAT concerning the patching of concrete walls; OPCMIA asserted that the work was awarded to them by the November 29, 1961 Agreement. A representative of IBPAT investigated the dispute and agreed that the work was covered by the 1961 Agreement and that it was awarded by the 1961 Agreement to the OPCMIA. Accordingly, IBPAT turned the work over to OPCMIA. A copy of OPCMIA's "telefax" communication asserting the dispute is annexed hereto as Exhibit "R"; a copy of the report from IBPAT's General Representative, dated January 14, 1975 is annexed hereto as Exhibit "S".

B. Exhaustion of Remedies Under the November 29, 1961 Agreement.

12. As the disputes complained of in this suit have arisen, Local 1974 and IBPAT have sought to resolve them by discussions with representatives of OPCMIA. When the OPCMIA locals in New York sent their members through Local 1974's picket lines in August and September 1974, as recounted in paragraphs 11 to 15 of the Verified Complaint, John Alfarone, on behalf of Local 1974, asked the Business Manager of OPCMIA's Local 60 to meet with him; I am advised that the latter refused. Demands were then made upon the Building and Construction Trades Council of New York City and upon the BTEA for formal mediation. This was finally arranged for December 10, 1974. Together with Mr. Alfarone, I attended that meeting on that date. In addition to representatives of the OPCMIA local unions in the area, OPCMIA was represented by its two International Vice Presidents for the New York area, Frank Rossetti and Michael Canuso. By that time, however, the job had been completed and the representatives of OPCMIA were able to dismiss the dispute as "academic." A copy of the BTEA's memorandum of that conference is annexed hereto as exhibit "T".

13. When the Metro North dispute occured, two mediation hearings were held; at each of them OPCMIA was represented by its International Vice Presidents for the New York area, Frank Rossetti and Michael Canuso, as well as by representatives of the local unions; at the first of these (held on April 8, 1975) Local 1974 was represented by John Alfarone; at the second (held on May 15, 1975), Mr. Alfarone represented Local 1974 while Vincent DiSilvestro, a General Representative of IBPAT, represented IBPAT. (an incorrect and uncorrected copy of the minutes of the first of these meetings is annexed to Mr. Boyle's affidavit as Exhibit 3.) The minutes of these two meetings are annexed hereto as Exhibits "U" and "V".

14. When the subsequent disputes arose, Local 1974 again sought to negotiate them with representatives of the OPCMIA. On August 29, 1975, a mediation meeting was held, concerning two instances in which members of OPCMIA were doing drywall taping and pointing work which, under the November 29, 1961 Agreement, was within the IBPAT's jurisdiction. I attended that meeting on behalf of IBPAT. Again, OPCMIA's two International Vice Presidents for the area, Frank Rossetti and Michael Canuso, attended on behalf of OPCMIA, and business agents representing Locals 60 and 202 appeared also. At that meeting, I pointed out that the work being done by members of the OPCMIA locals was taping and pointing of drywall surfaces to receive paint, and was thus plainly within the jurisdiction awarded to IBPAT by the November 29, 1961 Agreement. Mr. Rossetti, on behalf of OPCMIA, stated flatly that OPCMIA refused to recognize any rights of IBPAT under the November 29, 1961 Agreement. A copy of the minutes of the meeting is annexed hereto as Exhibit "W".

15. I am advised by John Alfarone, Business Manager of Local 1974, that in the course of the mediation hearings at which he attended, Mr. Rossetti has repeatedly told him that OPCMIA would not consider his claim under the 1961 Agreement, adding that they "don't belong here" (meaning by "here" the mediation meetings), that he didn't want to come to such meetings anymore, and that if Local 1974 wanted to press its claims it should "take us to civil court." At each of the meetings that I attended, Mr. Rossetti, on behalf of OPCMIA, told me that "You're wasting your time" in attempting to discuss the issue, indicating that OPCMIA would refuse to consider IBPAT's claims under the 1961 Agreement.

16. By attempting to negotiate with the International Vice Presidents of OPCMIA for the New York Area, IBPAT and Local 1974 exhaused in reality and substance the dispute settlement procedure called for in the November 29, 1961 Agreement. That Agreement calls for local discussions between business agents, and then for consideration on the International level. That is what has been done in regard to the instant disputes: Local 1974, by its business manager, John Alfarone, sought to straighten out the disputes by contacting the OPCMIA locals; when this was unsuccessful, formal meetings were arranged at which OPCMIA was represented by its two International Vice Presidents for the New York area. IBPAT continued to press for such meetings until it became clear that -- in Mr. Rossetti's words-- IBPAT was "wasting its time."

17. International unions in the building and construction trades are structured regionally; each geographical region of the United States and Canada is the specific responsibility of one or more International Vice Presidents and of International (or "General") Representatives working under them. In any region, the Inter-

national Vice President (or Vice Presidents) for that region make decisions on behalf of the International. Once the International Vice Presidents of OPCMIA for the New York area or region had decided in regard to a dispute, it would be (and is) futile to appeal to the General President. And that is precisely what Mr. Rossetti was informing us of at the August 29, 1975 meeting.

18. In the history of the November 29, 1961 Agreement, the question of whether the complaining International negotiated with the International Vice President of the other or with the latter's International President has never been deemed of significance. Either the International Vice President or the International President can represent a given International. There is no reason to distinquish between them for purposes of determining the International's response to a demand or request. (And, indeed the Impartial Jurisdictional Disputes Board has laid it down that for purposes of making job or jurisdictional decisions, under the 1961 Agreement, the question of whether the claimant has exhausted the remedies provided by the Agreement is itself of no consequence: the decision maker should proceed to decide the issues regardless of whether they have been exercised or exhausted, or pursued at all. See: Exhibit "H" (the decision of September 24, 1973))

C. No Other Dispute-Settlement Procedures Are Available.

19. As noted in paragraphs 7 through 10 above, the Joint Administrative Committee has directed the Impartial Jurisdictional Disputed Board to "defer action" on any request for a job decision

under the November 29, 1961 Agreement relating to the taping or pointing of drywall surfaces. That directive remains in force and has never been withdrawn. The Impartial Jurisdictional Disputes Board remains bound by it. In short, the dispute settlement procedures of the Impartial Jurisdictional Disputes Board are closed to Local 1974 and to IBPAT.

20. As noted in the affidavit of John Alfarone submitted in support of the plaintiffs' motion for preliminary injunction (paragraphs 13 and 14, thereof), Local 1974 sought to submit three questions to the BTEA for decision: the issue of the change of assignment (in the OPCMIA locals accepting assignment of work originally assigned to Local 1974), the issue of the materials being used ("plaster" or "adhesive"), and the issue of IBPAT's rightes under the November 29, 1961 Agreement. The BTEA, however, refused to consider the first and third of these: it considered only the second: the issues of the materials used. Mr. Fullilove, in his affidavit (top of page 3), suggests that the BTEA's reason for this was that "the parties could not agree among themselves as to whether or not the memorandum of understanding was in full force and effect..." At the subsequent arbitration, however, Local 1974 sought to raise the issue of the November 29, 1961 Agreement for decision but Mr. Rossetti, on behalf of the OPCMIA, again asserted that it had been abrogated "many times." (See transcript, Exhibit 1 to Mr. Canusso's affidavit, page 101 and 102). Whether for that reason or another, the BTEA did refuse to consider the 1961 Agreement. It considered only one question: whether the material in use was "plaster material" or "adhesive material" -- and this is all it decided.

21. What has been referred to above as the "materials" issue ("plaster material" vs. "adhesive material") refers to a jurisdictional decision made in 1947, quoted in the affidavit of James Boyle, paragraph 15.A. (pages 6-7. Breifly, that agreement assigned "plaster materials" when used to do "pointing and filling" to the OPCMIA; it assigned use of "adhesive materials" to the IBPAT. It is your deponent's belief that the material in question is adhesive and that if the question is ever brought to a full and fair hearing before an impartial body, it will be found to be adhesive. However, the question is not crucial here. The November 29, 1961 Agreement specifically says "All pointing and taping of drywall, regardless of material used is Painters work..." except where the surfaces are to receive plaster finish, acoustical finish, or imitation acoustical finish. (In all the instances complained of, the surfaces were or are to receive either paint or wallcoverings, and neither have received nor will receive plaster finish, or acoustical finish, or imitation acoustical finish.) And as noted earlier, the preamble to the Agreement (see inside of the front cover) lays it down that the Agreement "is to supersede any and all agreements or understandings, either written or oral, which have been in use over the years, which pertain to the items of work outlined in [the Agreement.]"

22. In short, BTEA directed its attention to a question which, for all present purposes, has been rendered irrelevant by the November 29, 1961 Agreement. And its decision was limited to that (irrelevant) question. It refused to consider or decide the issue of whether the work in question was within IBPAT's jurisdiction as established by the 1961 Agreement.

23. Any question as to what the BTEA decided in the Metro North "arbitration" may be cleared up by examination of the decision itself (Exhibit 8, Attached to the affidavit of James Boyle). Or further: at an arbitration hearing held on August 24, 1975,, H. Earl Fullilove, Chairman of the BTEA, testified concerning it and was cross-examined as to what questions had been decided and what had not. Relevant pages of his testimony, as reported in the transcript of that arbitration hearing, are annexed hereto as Exbibit "X".

D. Local 1974 did not "preclude" relief.

24. For the reasons noted above, it is fruitless for Mr. Boyle to protest (as he does in paragraph 21 of his affidavit, pages 8 to 9) that Local 1974, by proceeding with arbitration of a grievance under its collective bargaining agreement with an employer, "precluded" relief by provoking the Impartial Jurisdictional Disputes Board into withdrawing its acceptance of the appeal from the BTEA's decision. For even if the Impartial Jurisdictional Disputes Board had considered the appeal, it would not have had the relevant issue before it.

25. Following the refusal of BTEA to consider the change-of-assignment issue, request was made upon the Impartial Jurisdictional Disputes Board by IBPAT, on April 21, 1975, for a hearing on that issue. An extended correspondence and exchange of telephone calls ensued, in which the Board Chairman gave a variety of tenuous reasons for not allowing the Board to hear the question. And neither the Board nor the BTEA ever heard the question. Again,

in July, The Chairman of the Board wrote to IBPAT complaining that Local 1974 had instituted arbitration proceedings in which it complained that an employer had violated its collective bargaining agreement; as his letter indicated, this startling information had been communicated to him by the employers attorney. He protested that Local 1974 had thereby violated Article VII, Section 5 of the Plan for the Settlement of Jurisdictional Disputes. In subsequent telephone conversations, he revealed to me that he did not know what the issues at arbitration were. Nevertheless he had ruled that IBPAT was in violation of the Plan without bothering to accord IBPAT an opportunity to be heard. He was not even disturbed by the fact that Local 1974 had instituted the arbitration proceedings in March 1975, long before the BTEA had scheduled any mediation hearing.. I wrote to him, explaining that the arbitration dispute had nothing whatever to do with jurisdiction but merely charged the employer with violating certain provisions of the collective bargaining agreement concerning the subcontracting of work to another employer. His reply was to advise me that he was supported by his Board.

26. In reality, Local 1974 did not in any way violate Article VII, Section 5, of the Plan (or any other provision of it for that matter). I am familiar with the Plan and with the section in question. The intent of that section was to bar a union from unilaterally seeking to expand its jurisdiction for the purpose of ursurping the authority of the Impartial Jurisdictional Board. It was not intended to prevent any union from enforcing the ordinary terms of its c ollective bargaining agreement, yet the subcontracting clauses at issue in the arbitration are simply

that: they do not affect the union's jurisdiction. Chairman Driscoll's opinion would suggest that whenever a local union seeks arbitration on any matter at all it is violating Article VII, Section 5. IBPAT expressed its criticism of Mr. Driscoll's ruling in a letter of September 4, 1975 to the Chairman and Vice Chairman of the Joint Administrative Committee. A copy of that letter is annexed hereto as Exhibit "Y".

E. OPCMIA and the Defendant Local Unions Had No Collective Bargaining Relations with the Metropolitan Association Before 1974.

27. Finally, I am perplexed by Mr. Boyle's statement, in paragraph 21 of his affidavit, that "Defendant OPCMIA has had a collective bargaining with the Metropolitan New York Drywall Contractors Association, Inc. since 1966". Mr. Boyle knows better, it had (and has) no such agreement. OPCMIA did enter into a general agreement, relating to jurisdictional recognition over the use of certain materials, with the Gypsum Drywall Contractors' ~~Institute~~ INTERNATIONAL, a nationwide employers' organization, in 1966. That agreement did not (and does not) to any degree at all determine or establish wages, hours, or conditions of employment. It is a jurisdictional declaration only. Moreover, although it permits local employer's associations to adhere to its terms, Metropolitan did not do so until June 1974. And plainly Metropolitan did not consider it to be a collective bargaining agreement-- for I am advised that, on September 23, 1974, during the course of collective bargaining negotiations, Metropolitan's representatives

were asked, both orally and in writing, by Local 1974's representatives "whether the [Metropolitan] Association or any of the employers it represents has entered into any agreement presently or pro spectively in force with any labor organization other than Local 1974 covering or intended to cover any work that is within, or is arguably within, the scope of the agreement between the Association and Local 1974 or is similar in nature to such work, or covering or intended to cover any employees performing or to perform any such work..." And the Metropolitan's representatives answered "No".

28. As to the defendant local unions, they had no agreement whatever with Metropolitan, and no bargaining relations, until the negotiation of a secret agreement in November 1974, to take effect December 1, 1974. That agreement which was first revealed (so far as I am aware) at the arbitration hearing of August 4, 1975, is the only collective bargaining agreement ever entered into between OPCMIA (or any of its locals) and Metropolitan. It therefore appears that plaintiffs (and Mr. Alfarone) were stating the simple truth when they said, in paragraph 16A of the Verified Complaint, that prior to the work stoppage that commenced August 1, 1974, OPCMIA and its locals had never had any collective bargaining agreement or collective bargaining relationship with Metropolitan or with any members of Metropolitan.

James J. Shay
JAMES J. SHAY

Sworn to before me this 22nd
day of September, 1975

Gene M. Poulsen
GENE M. POULSEN
NOTARY PUBLIC

My Commission Expires June 14, 1978

Exhibit A
Annexed to Affidavit of
James J. Shay

MEMORANDUM OF UNDERSTANDING

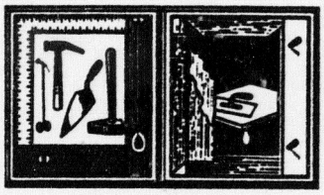
between

OPERATIVE PLASTERERS' AND CEMENT MASONS'
INTERNATIONAL ASSOCIATION
OF THE UNITED STATES AND CANADA

BRICKLAYERS, MASONS, AND PLASTERERS'
INTERNATIONAL UNION OF AMERICA

and

BROTHERHOOD OF PAINTERS, DECORATORS
AND PAPERHANGERS OF AMERICA



NOVEMBER 29, 1961

17 17

Printed in U.S.A.

187a

This Memorandum of Understanding is to supersede any and all agreements or understandings, either written or oral, which have been in use over the years, which pertain to the items of work outlined in this Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING

between

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA

BRICKLAYERS, MASONS, AND PLASTERERS' INTERNATIONAL UNION OF AMERICA

and

BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA

This Agreement has been entered into between the Operative Plasterers' and Cement Masons' International Association of United States and Canada (O.P. & C.M.I.A.), the Bricklayers, Masons and Plasterers' International Union of America (B.M. & P.I.U. of A.), and the Brotherhood of Painters, Decorators and Paperhangers of America (B. of P.D. & P.H. of A.) for the purpose of improving relations between the three International Unions and to facilitate the settlement of jurisdictional disputes directly and promptly between the three Organizations or any two of them, and in order to establish an understanding that will mutually assist each of the signatory parties to secure and to perform work coming within their recognized jurisdiction.

It is expressly understood and agreed that this Agreement shall not relate to nor have any bearing on jurisdictional disputes that may now exist or may in the future occur between any of the parties hereto and any other International Union or subordinate body thereof not parties hereto.

The parties signatory to this Agreement recognize each others right to use the basic tools necessary to perform work outlined in the following sections of this Agreement:

The term Plasterer or Cement Mason as used hereafter in this Agreement shall be construed to mean members or applicants for membership of the O.P. & C.M.I.A. or Plasterer or Cement Mason members or applicants for such membership of the B.M. & P.I.U. of A.

The term Painter as used hereafter in this Agreement shall be construed to mean members or applicants for membership of the B. of P.D. & P.H. of A.

189a

A. CORRECTION OF IMPERFECTIONS INCLUDING COATINGS RELATED TO FINISHING ON NEW OR OLD CONCRETE SURFACES.

1. It is agreed that all chipping, cutting, grinding, patching and rubbing of concrete surfaces necessary to correct imperfections caused by sagging, bulging or separation of concrete forms, or by the deterioration, scaling or cracking of concrete, shall be performed by Cement Masons.*

2. It is agreed that, where concrete surfaces are to receive materials recognized as the work of the Painter, and Cement Masons have performed and completed the operations outlined in paragraph 1, or where the conditions of the concrete surfaces is such as not to require any of the operations outlined in paragraph 1, the Painter shall do such pointing, preparatory to painting, as may be required to complete their work, provided such pointing shall not include the filling of air holes that exceed a diameter of ⅛".*

3. (a) It is agreed that the application of a brush-coat of cement-base material as part of the operation of patching concrete is the work of Cement Masons when the color of the cement-base material is substantially the same as the surface to which it is applied.

(b) Where brush-coat of cement-base materials is applied for purposes other than described in 3 (a) above, the work will belong to Painters.

* Picture illustrations of the work belonging to either the Painter or Cement Mason appear on Pages 6 and 7.

B. PREPARATION FOR AND APPLICATION OF WATERPROOFING MATERIALS FOR STOPPING LEAKS IN CONCRETE AND MASONRY UNITS.

1. All chipping and cutting of concrete that is necessary to trace sources of leakage and to prepare concrete surfaces, for installation of materials used in stopping leakage shall be under the jurisdiction of Plasterers or Cement Masons.

2. All chipping and cutting of Masonry Units that is necessary to trace sources of leakage and to prepare surfaces of such units for installation of materials used in stopping leakage in such units shall be the work of members of the B.M. & P. I. U. of A.

3. The installation of materials used in the stopping of leaks in concrete shall be under the jurisdiction of Plasterers or Cement Masons.

C. APPLICATION OF WATERPROOFING AND DAMP-PROOFING MATERIALS TO CONCRETE SURFACES.

1. The application of non-decorative** materials for waterproofing or dampproofing purposes on new or old concrete shall be the work of Cement Masons of the B.M. & P.I.U. of A. or the O.P. & C.M.I.A. of U.S. & C

** For purposes of defining the term "non-decorative" it shall mean:

a. Sand and cement coats, with or without damp or waterproofing additive, where no color is added—

b. Sand and cement coats, with or without damp or waterproofing additive substantially the same color as the surface to which it is applied—

c. Damp and waterproofing materials, identified as such by the manufacturer, which is substantially the same color as the surface to which it is applied.

2. The application of decorative*** materials for waterproofing or dampproofing purposes shall be the work of the Painter.

*** For purposes of defining the term "decorative" it shall mean:

a. Sand and cement coats, with or without damp or waterproofing additive, where color is added to the material—(This shall not be construed to deny the Plasterer the right to apply waterproofing Plaster to these surfaces wherever it is specified.)

b. Sand and cement coats, with or without damp or waterproofing additive, when the color is not substantially the same as the surface to which it is applied—

c. Damp and waterproofing material, identified as such by the manufacturer, where the color is not substantially the same as the surface to which it is applied—

d. All paint materials, identified as such by the manufacturer, regardless of color or method of application.

("Substantially the same" shall be white or gray cement or clear silicone, and shall apply under the "non-decorative" as well as "decorative" paragraphs of this Section.)

D. APPLICATION OF CEMENT BASE WASH COAT TO EXTERIOR PLASTERED SURFACES.

1. The application of initial wash coat to exterior plastered surfaces on new work* shall be the work of the Plasterers, providing the wash is substantially the same color as the surface to which it is applied (in all instances gray or white cement base

washes are considered to be substantially the same as the plastered surface to which they are applied).

2. The application of all washes to exterior plastered surfaces, except as defined in paragraph 1 of this Section, shall be the work of the Painters.

* New work as defined in this Section shall also include the major over-haul, renovation, repair or alteration of buildings.

E. THE APPLICATION OF THE FOLLOWING MATERIALS INCLUDING THE CLEANING AND PREPARATION OF CONCRETE FLOOR SURFACES TO RECEIVE CONCRETE STAINS, SEALERS, CURERS, HARDENERS AND WAXES.

1. The above materials included in concrete prior to pouring, or in the finishing process performed during the curing period (not to exceed one week) is the work of the Cement Mason.

2. After the curing period of one week has expired the application of all above materials is the work of Painters.

F. POINTING, TAPING AND TEXTURING ON DRYWALL SURFACES.

1. All pointing and taping of drywall, regardless of material used, is Painters' work, providing the drywall surfaces are not to receive plaster, acoustical or imitation acoustical finishes. The application of texturing to drywall surfaces is the work of Painters where paint materials are used.

2. The application of plaster, acoustical or imitation acoustical finishes shall be the work of the Plasterers, as well as the preparatory pointing and taping of drywall surfaces that are to receive these finishes.

If a dispute should arise over the interpretation or application of this Agreement, the two business agents of the respective unions shall make a conscientious endeavor to settle the dispute locally. Should the business agents fail to consummate a satisfactory understanding, they shall immediately draw up a joint or similar report describing the disputed work, including pictures and specifications of the work in dispute, and forward it to the Presidents of their respective International Unions.

Disputes forwarded to the respective General Presidents shall

be referred to a designated representative for immediate adjustment.

There shall be no stoppage of work while the dispute is in the process of settlement.

An Administrative Committee composed of one representative from each International Union shall be designated by the respective General Presidents to meet periodically to review work covered by this Agreement and to consider any problems which arise in order to adjust same.

Signed this November 29th, 1961

Approved by the General Executive Board of the
Brotherhood of Painters, Decorators and
Paperhangers of America

L. M. RAFTERY, *General President*
Brotherhood of Painters, Decorators
and Paperhangers of America

Approved by the General Executive Board of the
Bricklayers, Masons and Plasterers'
International Union of America

JOHN J. MURPHY, *President*
Bricklayers, Masons and Plasterers'
International Union of America

Approved by the General Executive Board of the
Operative Plasterers' and Cement Masons'
International Association of the United States and Canada

EDWARD J. LEONARD, *General President*
Operative Plasterers' and Cement Masons'
International Association of the
United States and Canada

Exhibit B
Annexed to Affidavit of
James J. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

August 24, 1973

In Reply Refer to:
MICH 8/24/73

RECEIVED
AUG 27 1973

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

JOSEPH T POWER General President
Operative Plasterers and Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

WEST SIDE CONSTRUCTION COMPANY
Contractor
5540 Allen Road
Allen Park Michigan 48101

CAR-MAR CONSTRUCTION INC
Subcontractor
31618 Eveningside
Fraser Michigan 48026

Gentlemen:

At its meeting August 23, 1973 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint, Woodhaven Elementary School project, Woodhaven Michigan, West Side Construction Company contractor, Car-Mar Construction Inc subcontractor.

The Board voted to make the following job decision: The work in dispute is governed by agreement of November 29, 1961 and shall be assigned to painters.

This action of the Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

William J. Cour

WILLIAM J COUR
Chairman

WJC/mjk

cc: Frank Bonadio - B&CT Dept

See reaffirmations of IJDB (filed underneath).

EXHIBIT "B"

Exhibit C
Annexed to Affidavit of
James J. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6317

September 10, 1973

In Reply Refer to:
MICH 8/24/73

JOSEPH T POWER, General President
Operative Plasterers and Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

RECEIVED
SEP 12 1973

Dear Mr Power:

At its meeting September 6, 1973 the Impartial Jurisdictional Disputes Board considered President Power's request that it rescind its job decision of August 23, 1973 in the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint, Woodhaven Elementary School project, Woodhaven Michigan, West Side Construction Company contractor, Car-Mar Construction Inc subcontractor. The Board reviewed its file in this dispute and voted to reaffirm its job decision.

In taking this action the Board, in accordance with the provisions of Sec. 5(a), page 11, of the Procedural Rules, considered both the Decision of Record of May 19, 1947 and the Memorandum of Understanding of November 29, 1961, including the statement on the inside front cover that: "This Memorandum of Understanding is to supersede any and all agreements or understandings, either written or oral, which have been in use over the years, which pertain to the items of work outlined in this Memorandum of Understanding." In the opinion of the Board, the Memorandum of Understanding of November 29, 1961 is applicable in this dispute.

The Board also discussed the request for return of this dispute to the submitting party for processing in accordance with the dispute settlement procedure of the 1961 Memorandum of Understanding. The Board voted that the administration of an agreement is the duty of the parties themselves and that when a request for a job decision is filed the internal settlement procedures are presumed to have been followed prior to the submission of the dispute to the Impartial Jurisdictional Disputes Board.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/lp

cc: FRANK RAFTERY - Painters
THOMAS F MURPHY - Bricklayers

EXHIBIT "C"

BEST COPY AVAILABLE

Exhibit D
Annexed to Affidavit of
James J. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

September 14, 1973

In Reply Refer to:
WISC 9/14/73

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

JOSEPH T POWER General President
Operative Plasterers & Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

HUNZINGER CONSTRUCTION
Contractor
4577 No. 124th Street
Butler Wisconsin

BROOKFIELD PLASTERING CORPORATION
Subcontractor
Route #3, Hwy E
Watertown Wisconsin 53094

IJDB
SEP 17 1973
RECEIVED

Gentlemen:

At its meeting September 13, 1973 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint, M.E.C.C.A. Convention Center project, Milwaukee Wisconsin, Hunzinger Construction contractor, Brookfield Plastering Corporation subcontractor.

The Board voted to make the following job decision: Pointing and taping of drywall to receive paint is governed by the agreement of November 29, 1961 and shall be assigned to painters. In other respects there is no basis to change the contractor's assignment. In making this decision, the Board also voted to reiterate its position that the administration of an agreement is the duty of the parties themselves and that when a request for a job decision is filed the internal settlement procedures are presumed to have been followed prior to the submission of the dispute to the Impartial Jurisdictional Disputes Board.

This action of the Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

William J. Cour

WILLIAM J COUR
Chairman

WJC/mjk
cc: Frank Bonadio - B&CT Dept

See reaffirmation of IJDB (filed underneath).

EXHIBIT "D"

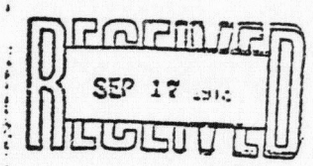
Exhibit E
Annexed to Affidavit of
James J. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

September 14, 1973

In Reply Refer to:
WISC 9/14/73



S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

JOSEPH T POWER General President
Operative Plasterers & Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20006

JOHN E GREGORY & SON INC
Contractor
6816 W. State Street
Wauwatosa Wisconsin 53213

Gentlemen:

At its meeting September 13, 1973 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint, Wauwatosa East High School project, Milwaukee Wisconsin, John E Gregory & Son Inc contractor.

The Board voted to make the following job decision: Pointing and taping of drywall to receive paint is governed by the agreement of November 29, 1961 and shall be assigned to painters. In other respects there is no basis to change the contractor's assignment. In making this decision, the Board also voted to reiterate its position that the administration of an agreement is the duty of the parties themselves and that when a request for a job decision is filed the internal settlement procedures are presumed to have been followed prior to the submission of the dispute to the Impartial Jurisdictional Disputes Board.

This action of the Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/mjk

cc: Frank Bonadio - B&CT Dept.

See reaffirmation of IJDB (filed underneath).

EXHIBIT "E"

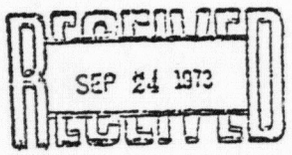
Exhibit F
Annexed to Affidavit of
James J. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

September 21, 1973

In Reply Refer to:
COIC 9/21/73



S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

JOSEPH T POWER General President
Operative Plasterers and Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

COLORADO PROPERTIES
Contractor
3900 Elati
Denver Colorado 80216

RICHARD O'BRIEN PLASTERING COMPANY
Subcontractor
1001 South Galapago
Denver Colorado 80223

Gentlemen:

At its meeting September 20, 1973 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint, Rodeway Convention Center project, Denver Colorado, Colorado Properties contractor, Richard O'Brien Plastering Co subcontractor.

The Board voted to make the following job decision: Pointing and taping of drywall to receive paint is governed by the agreement of November 20, 1961 and shall be assigned to painters. In other respects there is no basis to change the contractor's assignment.

This action of the Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

William J. Cour

WILLIAM J COUR
Chairman

WJC/mjk

cc: Frank Bonadio - B&CT Dept

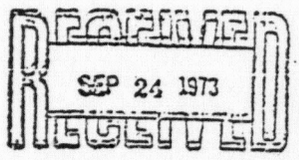
EXHIBIT "F"

Exhibit G
Annexed to Affidavit of
James J. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

September 21, 1973 In Reply Refer to:
COLO 9/21/73



S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

JOSEPH T POWER General President
Operative Plasterers and Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

N G PETRY COMPANY
Contractor
1114 W 7th Avenue
Denver Colorado

RICHARD O'BRIEN PLASTERING COMPANY
Subcontractor
1001 South Galapago
Denver Colorado 80223

Gentlemen:

At its meeting September 20, 1973 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint, Mission Viejo Elementary School project, Aurora Colorado, N G Petry Company contractor, Richard O'Brien Plastering Co subcontractor.

The Board voted to make the following job decision: Pointing and taping of drywall to receive paint is governed by the agreement of November 29, 1961 and shall be assigned to painters. In other respects there is no basis to change the contractor's assignment.

This action of the Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

William J. Cour

WILLIAM J COUR
Chairman

WJC/mjk

cc: Frank Bonadio - B&CT Dept

EXHIBIT "G"

Exhibit H
Annexed to Affidavit of
James J. Shay

NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES
BUILDING AND CONSTRUCTION INDUSTRY

815 SIXTEENTH, STREET N. W., WASHINGTON, D. C. 20006
STerling 3-6817

September 21, 1973

In Reply Refer to:
MICH 3/21/73
WISC 9/14/73 (2)

O.P.A.C.
SEP 26 1973
RECEIVED

Mr Joseph T Power, General President
Operative Plasterers and Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

Dear Mr Power:

At its meeting September 20, 1973 the Impartial Jurisdictional Disputes Board considered President Power's letters of September 13 and 20, 1973 requesting rescission of its job decisions in the jurisdictional disputes between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over painting and taping of drywall to receive paint, Woodhaven Elementary School project, Woodhaven Michigan; Wauwatosa East High School project, Wauwatosa Wisconsin; and M E C C A Convention project, Milwaukee Wisconsin.

The Board reviewed its actions in these jurisdictional disputes in light of the procedures to resolve disputes contained in the November 29, 1961 agreement to which both disputants are parties. The Board voted to reaffirm its job decisions, including the statement "that the administration of an agreement is the duty of the parties themselves and that when a request for a job decision is filed the internal settlement procedures are presumed to have been followed prior to the submission of the dispute to the Impartial Jurisdictional Disputes Board."

In the opinion of the Board, the duty to administer and follow the procedures of an agreement or understanding is that of the parties themselves and not that of the Board. A claim that one party has failed to follow the administrative procedures is likewise a matter for correction by the parties themselves. It is the position of the Board that when a request for a job decision is filed in accordance with Article V, Sec. 5, of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, the Impartial Jurisdictional Disputes Board will presume that the internal procedures of an agreement or understanding have been exhausted and will process the request for a job decision in accordance with its duty under the Plan.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/lp

cc: S FRANK RAFTERY - Painters

EXHIBIT "H"

BEST COPY AVAILABLE

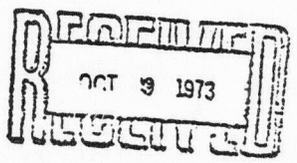
Exhibit I
Annexed to Affidavit of
James F. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

October 5, 1973

In Reply Refer to:
~~COLO 10/5/73~~



S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

JOSEPH T POWER General President
Operative Plasterers & Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

N G PETRY COMPANY
Contractor
1114 W 7th Avenue
Denver Colorado

RICHARD O'BRIEN PLASTERING COMPANY
Subcontractor
1001 South Galapago Street
Denver Colorado 80223

Gentlemen:

At its meeting October 4, 1973 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint, Fine Arts Building project, Cherry Creek School District, Littleton Colorado, N G Petry Company contractor, Richard O'Brien Plastering Company subcontractor.

The Board voted to make the following job decision: Pointing and taping of drywall is governed by the agreement of November 29, 1961 and shall be assigned to painters. In other respects there is no basis to change the contractor's assignment.

This action of the Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

William J. Cour

WILLIAM J COUR
Chairman

WJC/mjk

cc: Frank Bonadio - B&CT Dept
Joe M Baker, Jr - IAW&CC

See IJDB denial of request for rescission (filed underneath).

EXHIBIT "I"

Exhibit J
Annexed to Affidavit of
James J. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6317

November 2, 1973

In Reply Refer to:
COLO 11/2/73

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

JOSEPH T POWER General President
Operative Plasterers & Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

TITAN CONSTRUCTION CO
Contractor
4395 North Broadway
Denver Colorado 80216

O'BRIEN PLASTERING CO
Subcontractor
1001 South Galapago
Denver Colorado 80223

Gentlemen:

At its meeting November 1, 1973 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint and wall coverings, St Joseph Hospital project, Denver Colorado, Titan Construction Company contractor, O'Brien Plastering Company subcontractor.

The Board voted to make the following job decision: The work in dispute is governed by the agreement of November 29, 1961 and shall be assigned to painters.

This action of the Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

William J. Cour

WILLIAM J COUR
Chairman

WJC/mjk

cc: Frank Bonadio - B&CT Dept

EXHIBIT "J"

Exhibit K
Annexed to Affidavit of
James J. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

November 2, 1973

In Reply Refer to:
COLO 11/2/73

RECEIVED
NOV 5 1973

S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

JOSEPH T POWER General President
Operative Plasterers and Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

GERALD PHIPPS CONSTRUCTION CO
Contractor
P O Box 4387
Denver Colorado 80204

MERRITT PLASTERING COMPANY
Subcontractor
1970 South Bannock
Denver Colorado

Gentlemen:

At its meeting November 1, 1973 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint and wall coverings, Rocky Mountain Osteopathic Hospital project, Denver Colorado, Gerald Phipps Construction Co contractor, Merritt Plastering Company subcontractor.

The Board voted to make the following job decision: The work in dispute is governed by the agreement of November 29, 1961 and shall be assigned to painters.

This action of the Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

William J. Cour

WILLIAM J COUR
Chairman

WJC/mjk

cc: Frank Bonadio - B&CT Dept

EXHIBIT "K"

Exhibit L
Annexed to Affidavit of
James J. Shay

JOINT ADMINISTRATIVE COMMITTEE

Plan for Settlement of Jurisdictional Disputes in the Construction Industry

815 - 16th Street, N.W. Washington, D.C. 20006

December 11, 1973

S FRANK RAFTERY General President
International Brotherhood of Painters and Allied Trades
1750 New York Avenue NW
Washington D C 20006

DEC 13 1973
RECEIVED

JOSEPH T POWER General President
Operative Plasterers and Cement Masons
International Association
1125 Seventeenth Street N W
Washington D C 20036

THOMAS F MURPHY General President
Bricklayers Masons and Plasterers International Union
Bowen Building
Washington D C 20005

Gentlemen:

Pursuant to Article X, Sec 2 of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry the Joint Administrative Committee at its meeting of December 4, 1973 reviewed the record of decisions and pending cases in jurisdictional disputes involving (1) the patching and plastering of concrete ceilings and (2) pointing and taping of drywall surfaces.

The Committee also examined the November 29, 1961 Memorandum of Understanding to which the Bricklayers Masons and Plasterers International Union the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association are parties. The cases in question involve only the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association.

Following a discussion of the matter the Joint Administrative Committee voted to notify President Murphy President Power and President Raftery that effective immediately, in accordance with Article X Sec 2 of the Plan the above listed disputes are referred to their respective InternationalUnions for the purpose of attempting to reach a national agreement governing future jurisdiction.

EXHIBIT "L"

S FRANK RAFTERY General President -2- December 11 1973
JOSEPH T POWER General President
THOMAS F MURPHY General President

In referring these disputes directly to the International Unions, the Joint Administrative Committee takes the position that their reference to the Chairman as repetitive disputes and the authorization by the Joint Administrative Committee to the Chairman to issue immediate decisions are not mandatory and in light of the history of such disputes, of doubtful value.

The Joint Administrative Committee also voted to notify the Impartial Jurisdictional Disputes Board that the Board shall defer action on any request for a job decision in cases involving the type of jurisdictional disputes listed above.

It is to be understood by all parties that in the event of a dispute over such work on any job, there will be no work stoppage picket line or other interference and that work will proceed in accordance with the responsible contractor's original assignment unless changed by agreement between the disputing parties.

Very truly yours,

Frank Bonadio

FRANK BONADIO
Chairman

FB/p

Harry P. Taylor

HARRY P. TAYLOR
Vice Chairman

cc: WILLIAM COUR
RICHARD MITCHELL
D QUINN MILLS

EXHIBIT "L"

Exhibit M
Annexed to Affidavit of
James J. Shay

January 8, 1974 217a

Mr. Frank Sonadio, Chairman
Joint Administrative Committee
Plan for Settlement of
Jurisdictional Disputes in
the Construction Industry
815 - 16th Street, N.W.
Washington, D.C. 20006

Mr. Harry P. Taylor, Vice Chairma
Joint Administrative Committee
Plan for Settlement of
Jurisdictional Disputes in
the Construction Industry
815 - 16th Street, N.W.
Washington, D.C. 20006

Gentlemen:

This responds to your letter of December 11, 1973, in which disputes involving "(1) the patching and plastering of concrete ceilings and (2) pointing and taping of drywall surfaces" have been referred to the respective International Unions "for the purpose of attempting to reach a national agreement" pursuant to Article X, Section 2 of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry. Your letter is both disturbing and puzzling in many respects and I would, therefore, ask you for a clarification and reconsideration in line with the following comments.

Your referral of the disputes to the International Unions purports to be based on Article X, Section 2, and yet the referral is made without authorization to the Chairman to issue immediate decisions. This would appear to be in conflict with Section 2 of Article X which permits such referral to the International Unions only "in the event the Joint Administrative Committee declares such disputes to be repetitive and authorizes the Chairman to issue immediate decisions ...." (Emphasis added.)

In addition, this referral to the International Unions would appear to be based on the Committee's finding that the subject disputes are "repetitive." As far as we are aware, there has been no ruling or interpretation as to the meaning of that word and we would appreciate a clarification on that point so

EXHIBIT "M"

that we can determine why these particular disputes are repetitive in nature within the meaning of Article X, Section 2. Further, we would like an explanation as to the apparent discriminatory treatment of this Union, since a number of "repetitive" disputes have come before the Board on many occasions involving other International Unions and those disputes have not been handled under Article X, Section 2, as they have in this case. For example, in reviewing all cases that have come before the Board in recent months we find what appear to be repetitive disputes between the Carpenters and Sheet Metal Workers over the installation of fume hoods; what appear to be repetitive disputes between the Plasterers and Tile Setters over the squaring of walls to receive tile; what appear to be repetitive disputes between the Laborers and Carpenters over the stripping of forms; and what appear to be repetitive disputes between the Bricklayers and Carpenters over Styrofoam insulation. The question is why were we singled out for Article X, Section 2 treatment when these others were not?

Your letter is particularly puzzling and confusing in referring this to the International Unions "to reach a national agreement" in the face of the fact that there is already in effect a National Agreement covering jurisdiction on these particular disputes between our organization and the Bricklayers, Masons and Plasterers International Union and the Operative Plasterers and Cement Masons International Association dated November 29, 1951. This must be well known to you since the Board has rendered a number of decisions making specific reference to that National Agreement and on the basis of that National Agreement (see, for example, MICH 8/24/73, WISC 9/14/73, WISC 9/14/73, COLO 9/21/73, COLO 10/5/73, COLO 11/2/73). It seems to us clear that Article X, Section 2 procedures were not intended to be invoked where a National Agreement is already in effect covering the disputed items.

We appear to be discriminated against in another fashion, as other disputes that seem to be no more nor less "repetitive" than ours are being referred by the Board to the parties for informal settlement. We refer you in this connection to the minutes of the Board dated June 21, 1973, where a dispute between the Sheet Metal Workers and Carpenters was referred to the respective General Presidents "to initiate procedures to arrive at a workable solution." The same action was taken in the Board's minutes of November 13, 1973, on page three, on a dispute between the Ironworkers and Boilermakers. The question is why is that kind of solution not being applied in our cases as well, rather than being singled out for treatment under Article X, Section 2 of the Plan?

EXHIBIT "M"

BEST COPY AVAILABLE

It is our firm position that the proper way to handle the disputes described in your letter of December 11, 1973 is to refer the cases to the parties themselves to resolve under their National Agreement dated November 29, 1961. In light of these comments and statement of our position, we request a clarification and reconsideration of your December 11, 1973 letter.

We further request that, along with your reply, you forward to us copies of each specific case file that was considered as being repetitive by the Joint Administrative Committee on (1) the patching and plastering of concrete ceilings and (2) pointing and taping of drywall surfaces.

Very truly yours,

S. FRANK RAFTERY
General President

cc: General Executive Board
Members
EAGP Martin
General Counsel Darr
bcc: Mr. Glen Craven, PDCA
Mr. Howard Leederman, GDCI
Mr. Joe Baker, iaMCC

JS:vs

EXHIBIT "M"

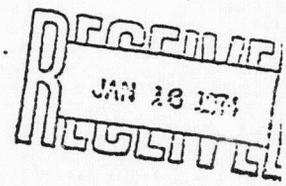
BEST COPY AVAILABLE

Exhibit N
Annexed to Affidavit of
James J. Shay

JOIN ADMINISTRATIVE COMMITTEE

Plan for Settlement of Jurisdictional Disputes
in the Construction Industry

815 - 16th Street, N.W. Washington, D.C. 20006



January 15, 1974

Mr. S. Frank Raftery, General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue, N. W.
Washington, D. C. 20006

Dear Sir and Brother:

This is in reply to your letter of January 8, 1974 in which you show a great deal of concern over the action of the Joint Administrative Committee of the Impartial Jurisdictional Disputes Board.

The Operative Plasterers' and Cement Masons' International Association of the U. S. and Canada have also protested the action, and I can assure you that both your letter and General President Power's letter will be brought to the attention of the Joint Administrative Committee at our next regular meeting.

With best wishes, I am

Fraternally yours,

Frank Bonadio

Frank Bonadio
Chairman

FB/nd
opeiu#2afl-cio

cc: Mr. Harry Taylor

EXHIBIT "N"

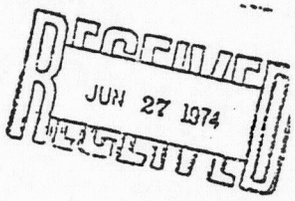
Exhibit O
Annexed to Affidavit of
James F. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

June 26, 1974

In Reply Refer to:
PENN 6/24/74



S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

TEMPE BUILDERS
Contractor
Routes 98 & 832 (Sterettania Road)
Millcreek Pennsylvania

UNIVERSAL DRYWALL SYSTEMS INC
Subcontractor
Box 75
Springboro Pennsylvania 16435

Gentlemen:

Please disregard our letters of June 24, 1974 regarding the jurisdictional dispute between the Operative Plasterers and Cement Masons International Association and the International Brotherhood of Painters and Allied Trades over plastering of walls and ceilings, Spartan Motor Inn project, Routes 98 and 832 (Sterettania Road) Millcreek Pennsylvania, Tempe Builders contractor, Universal Drywall Systems Inc subcontractor.

In accordance with the action of December 4, 1973 of the Joint Administrative Committee, the Impartial Jurisdictional Disputes Board will continue to defer action on this request for a job decision.

Very truly yours,

William J. Cour

WILLIAM J COUR
Chairman

WJC/mjk

cc: Joseph T Power -OP&CMIA

EXHIBIT "O"

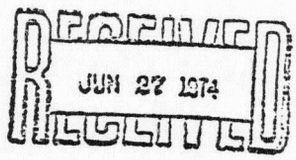
Exhibit P
Annexed to Affidavit of
James F. Shay

IMPARTIAL JURISDICTIONAL DISPUTES BOARD
FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

June 26, 1974

In Reply Refer to:
DC 4/19/74



S FRANK RAFTERY General President
International Brotherhood of Painters
and Allied Trades
1750 New York Avenue N W
Washington D C 20006

Dear Mr Raftery:

Further reference is made to our file DC 4/19/74 and your request of June 10, 1974 for a job decision in the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall, New Department of Labor Building project, Washington D C, J W Bateson Co Inc contractor, Blazier-Fierce (joint venture) subcontractor.

In accordance with the action of December 4, 1973 of the Joint Administrative Committee, the Impartial Jurisdictional Disputes Board will continue to defer action on this request for a job decision.

Very truly yours,

William J. Cour

WILLIAM J COUR
Chairman

WJC/mjk

cc: Joseph T Power - OP&CMIA
J W Bateson Co - contr - P O Box 426, Merrifield Va 22116
Blzaier-Pierce (joint venture) subcontr - 2440 Virginia Ave., NW
Room 604, Washington D C

EXHIBIT "P"

Exhibit Q
Annexed to Affidavit of
James J. Shay

BM&PIU

Office of the First Vice President

DEC 11 1973
RECEIVED

December 10th,1973

Mr. Thomas J. McIntyre, Vice President
B. M. & P. I. U. OF A.
20 Orchard Street
Jamaica Plain, Mass. 02130

Dear Sir and Brother:

Reference is made to the dispute over grinding and patching of concrete ceilings on the General Reinsurance Building project in Greenwich, Conn., Antovel-Gelberg Painting Company, subcontractor.

James Shay, Jurisdictional Director for the International Brotherhood of Painters and Allied Trades, looked over the pictures and reports we have here in Washington, D.C.

It is agreed that the grinding and patching of concrete holes prior to painting, as outlined in Memorandum of Understanding dated 1961, will be the work of the Bricklayers, Masons and Plasterers International Union.

It was agreed that if you could contact Mr. Edward L. Crowley, the IBPAT area representative, this matter can be resolved accordingly.

Please arrange to call Mr. Crowley who has been out of state for some time.

Fraternally yours,

James F. Richardson

James F. Richardson
First Vice President

JFR:mah

Copy to: James Shay, Director Jurisdictional Department IBPAT ✓
Alphonso DeMartino, Business Agent BMPIU Local 14, Conn.

EXHIBIT "Q"

Exhibit R
Annexed to Affidavit of
James J. Shay

western union

RECEIVED
JAN 7 1975

Telefax

CALL LETTERS VIA MAIL

CHARGE TO OP&CMIA

January 6, 1975

Mr. S. Frank Raftery, General President, Painters' Int'l
1750 New York Avenue, N. W., Washington, D. C. 20006

Dispute exists between our members over patching of concrete walls on the Ohio Bell Company, 111 North 4th Street, Columbus, Ohio.

Request you assign a representative to meet with our Vice President Donald B. Johnston who can be contacted at 736 Longacre Drive, Akron, Ohio, Phone 216/644-3338 for the purpose of arranging job-site meeting to adjust said dispute.

JOSEPH T. POWER, GENERAL PRESIDENT, OP&CMIA

JTP:Bag

SENDING BLANK

Send the above message, subject to terms on back hereof, which are hereby agreed to

PLEASE TYPE OR WRITE PLAINLY WITHIN BORDER-DO NOT FOLD

WU 1269 (R9/69)

Arrange Meeting
cc [illegible]
[illegible] 1-7-75
J. Power

EXHIBIT "R"

Exhibit S
Annexed to Affidavit of
James J. Shay

BROTHERHOOD OF PAINTERS, DECORATORS
AND PAPERHANGERS OF AMERICA, AFL-CIO

RECEIVED
JAN 16 1975

JURISDICTIONAL REPORT
TO THE
GENERAL PRESIDENT

DATE OF ASSIGNMENT 1/8/75 NOTIFIED BY WIRE ☐ LETTER ☒

OTHER (SPECIFY) ____ OUR LU ~~or DC~~ Involved 1275 OTHER CRAFT 536

DISPUTE WITH (CRAFT) Cement Mason PROJECT Ohio Bell Co. LOCATION 111 North 4th Street Columbus, Ohio

GENERAL CONTRACTOR R.W. Setterlin & Son - 2000 Kenny Road Columbus, Ohio (614) 486-7108
NAME STREET CITY STATE PHONE

SUBCONTRACTOR L.D. Henry Co - 1020 W. Goodale Columbus, Ohio (614) 299-1103
NAME STREET CITY STATE PHONE

WORK IN DISPUTE Patching of concrete walls and columns

CRAFT DOING WORK AT TIME OF DISPUTE Painters

SETTLEMENT MADE (If none, also Explain) We agreed to be bound by the Memorandum of Understandin
of November 29, 1961 page 2 - A-2.

DATE OF SETTLEMENT 1/13/75

ON JOB SITE ☒ TELEPHONE ☐ OTHER (Specify) ____

ATTENDED BY:
OUR BROTHERHOOD Wm. Cutlip, Forman for L.D. Henry, C. Cydrus, B.R. L.U. #1275

OTHER CRAFT Clarence Lee, B. A. L.U. #536 - Don Johnson, V.P. O.P.&C.M.I.A.

GENERAL CONTRACTOR Glen Young, Supertendent - Setterlin Co.

SUBCONTRACTOR Notified by phone of settlement

REMARKS ____

Submitted By:
[signature]
GENERAL REPRESENTATIVE

DATE OF REPORT 1/14/75

White Copy—General President Blue Copy—General Vice President Yellow Copy—General Representative

EXHIBIT "5"

Exhibit T
Annexed to Affidavit of
James J. Shay

Memorandum of a Conference of the Board of Mediation and Conciliation held in the rooms of the Building Trades Employers' Association on Tuesday, December 10, 1974

DISPUTANTS:	Between Drywall Tapers Local Union 1974 and Plasterers Local Union 60.
WORK IN QUESTION:	Taping
JOB:	Mott Haven Project, Bronx
MEDIATION REQUESTED BY:	Drywall Tapers Local Union 1974.

The parties were called before the Board of Mediation and Conciliation consisting of H. Earl Fullilove, Chairman, Board of Governors, Building Trades Employers' Association, and in the absence of Thomas W. Tobin, President, Building and Construction Trades Council, Edward J. Cleary, Secretary-Treasurer, Building and Construction Trades Council, to settle the controversy by mediation or conciliation, if possible.

Mr. Fullilove presided and William A. Canavan acted as secretary.

PRESENT:

REPRESENTING DRYWALL TAPERS LOCAL UNION 1974:
Messrs. John Alferone
James Shay

REPRESENTING PLASTERERS LOCAL UNION 60:
Messrs. Frank Rossetti
Frank LoPresti
Mike Canuso
Carmine Marotta
Dick Conte

EXHIBIT "T"

Because one of the Plasterers' Locals affected had not been officially notified of the mediation date, it was determined to restrict the meeting to the Mott Haven Project only.

Mr. Shay outlined the background of the dispute by stating the facts relative to the Tapers strike which commenced on August 1. He thereupon contended that some weeks following that date the work assignment on the job in question was changed from the Tapers to the Plasterers in violation of the "contractor responsibility" aspects of traditional assignment practice. He stated that the Tapers in this case were asking relief relative to the change of assignment and were not seeking to discuss the question of change of material which was also involved (from primarily taping material to plaster).

Mr. Rossetti contended that the change in material factor was an important element in the discussion inasmuch as while taping was being done on the job the jurisdiction of the Tapers was respected by the Plasterers; however, when the material was changed to plaster -- which is within the direct province of the Plasterers -- he had no recourse but to direct Plasterers Local 60 to man the job in accordance with instructions received from his International.

EXHIBIT "T"

A brief discussion ensued concerning the relative merits of both the preceding contentions in light of the fact that both the change of assignment and the change of material occurred during an economic strike.

Mr. LoPresti indicated that he felt that the entire issue was academic since the job in question had been completed. Mr. Alferone indicated that to his knowledge the job might be finished.

The meeting ended with a general agreement in principle that the issue of "contractor responsibility" in making assignments was an integral factor in alleviating jurisdictional disputes between local unions and, specifically, Plasterers' representatives indicated that it would be their policy to respect any reversion to the Tapers on job assignments similar to the case at issue. In addition, Mr. Fullilove indicated that should he be advised that the Mott Haven Job was not in fact completed, he would use his best offices to advise the contractor involved to reconsider the assignment.

The meeting adjourned.

Secretary.

EXHIBIT "T"

Exhibit U
Annexed to Affidavit of
James J. Shay

4 - 75 - Corrected

CORRECTED

Memorandum of a Conference of the Board of Mediation and Conciliation held in the rooms of the Building Trades Employers' Association on Tuesday, April 8, 1975.

DISPUTANTS:	Between Tapers, Local #1974 and Plasterers, Local #60
WORK IN QUESTION:	Change of Work Assignment
JOB:	101 Street & East River Drive
GENERAL CONTRACTOR:	Soverign Construction Company
SUB-CONTRACTORS:	Colletti & Laguidara, Inc. National Applicator
BUILDER & SPONSOR:	Metro North
MEDIATION REQUESTED BY:	Tapers, Local #1974

The parties were called before the Board of Mediation and Conciliation consisting of H. Earl Fullilove, Chairman, Board of Governors, Building Trades Employers' Association, and in the absence of Peter J. Brennan, President, Building and Construction Trades Council, Edward J. Cleary, Secretary-Treasurer, to settle the controversy by mediation or conciliation, if possible.

Mr. Fullilove presided.

PRESENT: REPRESENTING TAPERS, LOCAL #1974:

Mr. John Alfarone

REPRESENTING PLASTERERS UNION, Local #60

Messrs. Frank Rossette
Frank LoPresti
Mike Canuso
Louis Euvino
Tony Marullo

EXHIBIT "U"

4 - 75 corrected

The request for mediation was from the Tapers, Local #1974. The project involved contains 4 buildings, 2 of which have been completed by the Tapers. Mr. Alfarone stated that National Applicator had the contract for the installation of the wall board on all 4 buildings and that they had assigned the taping in the first 2 buildings to the Tapers Union. In October, 1974, the Tapers struck the job because of non-payment of the funds to the Tapers Union.

Mr. Alfarone stated that subsequently National Applicator had started to load the third building with the material for the taping of same.

Mr. Frank LoPresti stated that the work in the third building was assigned to the Plasterers by Metro North.

Mr. Alfarone stated that he was objecting to the change of work assignment, not to the use of the material in question presently being installed by the plasterers. He stated further that the materials are presently being analyzed, and the issue of which trade was entitled to use those materials was not presently before the mediators.

Mr. Cleary and I felt that this was not a jurisdictional dispute and so advised Mr. Alfarone since his complaint concerned the change of work assignment and not jurisdiction. Mr. Alfarone requested that I so advise him by letter.

The meeting adjourned.

EXHIBIT "U"

Exhibit V
Annexed to Affidavit of
James J. Shay

8 - 75

Memorandum of a Conference of the Board of Mediation and Conciliation held in the rooms of the Building Trades Employers' Association on Thursday, May 15, 1975

DISPUTANTS:	Between Tapers, Local #1974 and Plasterers, Local #60
WORK IN QUESTION:	Application of Adhesive Material, "Sta-Smooth"
JOBS:	1) Metro North, 101 St. & East River Driv 2) 67th St. bet. Broadway & Amsterdam Aves
CONTRACTOR:	1) Colletti & Laquidara, Inc. 2) Colletti & Laguidara, Inc.
MEDIATION REQUESTED BY:	Tapers, Local #1974

The parties were called before the Board of Mediation and Conciliation consisting of H. Earl Fullilove, Chairman, Board of Governors, Building Trades Employers' Association, and in the absence of Peter J. Brennan, President, Building and Construction Trades Council, Edward J. Cleary, Secretary-Treasurer, to settle the controversy by mediation or conciliation, if possible.

Mr. Fullilove presided, and William A. Canavan, acted as secretary.

PRESENT: REPRESENTING TAPERS, LOCAL #1974:

Messrs. John Alfarone
Vincent DeSilvestere

REPRESENTING PLASTERERS UNION, LOCAL #60:

Messrs. Frank Rossetti
Frank LoPresti
Mike Canuso
Louis Euvino
Tony Marullo

EXHIBIT "V"

After preliminary discussion among all parties of the propriety and procedure of this issue within the authority of the New York Plan for the Settlement of Jurisdictional Disputes it was agreed to proceed with the subject matter on its merits.

Mr. Alfarone contended that the disputed material, "Sta-Smooth", was an adhesive material and as such within the jurisdictional purview of Tapers, Local #1974. He based his contention on a May 19, 1947, decision of Referee William L. Hutcheson, entitled "Pointing, Taping and Filling of Joints on Wall Board" (copy attached to these minutes) contained in the national Green Book. Mr. Alfarone further submitted a laboratory report (copy also attached) from Konstandt Laboratories Inc., which he maintained proved that the material in question was an adhesive.

Mr. Rosetti and other representatives of Plasterers Union, Local #60, did not accept the laboratory report as conclusive and maintained that in their opinion and that of the contractor involved on these jobs, the disputed material was of a type which was traditionally applied by their Local. It was also noted that technological advances had been made since the time of the decision of Mr. Hutcheson, and that the distinction between plastering and taping materials was not clear in all cases.

EXHIBIT "V"

Mr. Fullilove recommended in an attempt to resolve the issue without resorting to arbitration that both parties obtain from the job sites samples of the material in question; jointly submit it to a mutually agreed upon laboratory for analysis; and abide by the rulings there of.

Mr. Alfarone agreed to this procedure.

Representatives of Local 60, asserted this would not be possible without direction from their International Union which was not likely to be forthcoming.

No resolution of the issue being likely, the meeting adjourned, and Mr. Alfarone indicated that he would take into consideration applying for arbitration in this matter.

The meeting adjourned.

William A. Canavan, Secretary

EXHIBIT "V"

line to dwelling is work that should be done by, or under the supervision of, members of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada.

WM. L. HUTCHESON (Signed)
National Referee,
Building and Construction Trades Department

(NOTE—This in no way deletes or expunges from the records of this Department the letter of March 9, 1946, addressed to the Morris County, New Jersey, Building and Construction Trades Council or the advice contained in Vice President Hutcheson's telegram of March 27, 1946.)

Pointing, Taping and Filling of Joints on Wall Board

May 19, 1947.

Mr. Richard J. Gray, President
Building and Construction Trades Department
501 A. F. of L. Building,
Washington 1, D. C.

Dear Sir and Brother:

In the matter of the jurisdictional controversy over the pointing, taping and filling of joints on wallboard in preparing it to receive paint and other wall coverings, involving the Brotherhood of Painters, Decorators and Paperhangers of America; Bricklayers, Masons and Plasterers International Union of America and the Operative Plasterers and Cement Finishers International Association of the United States and Canada, a hearing was held in the Executive Council room, American Federation of Labor building, May 6, 1947.

Representing the organizations involved were: Harry C. Bates, President of the B. M. and P. I. U. of A.; John E. Rooney, President of the

O. P. and C. F. I. A.; L. P. Lindelof, General President. B. of P. D. and P. of A.; Joseph P. Hillock, Painters, Washington, D. C.; J. C. Moenick, Secretary-Treasurer, Painters District Council, Chicago, Ill.; Milton R. Stephens, Plasterers, Washington, D. C., and Walter Redmond, International Secretary of the O. P. and C. F. I. A.

After giving the statements made, and evidence submitted, careful consideration I have reached a conclusion and render the following decision; to wit:

When plaster material is used to do pointing and filling it shall be the work of members of the Operative Plasterers and Cement Finishers International Association of the United States and Canada—and/or—members of the Bricklayers, Masons and Plasterers International Union of America.

When adhesive materials are used it shall be the work of members of the Brotherhood of Painters, Decorators and Paperhangers of America.

Respectfully submitted,
WM. L. HUTCHESON (Signed)
Referee,
Building and Construction Trades Department.

Sitting with Referee at hearing were: Vice Presidents Wm. J. McSorley and Robert Byron of the Building and Construction Trades Department.

EXHIBIT "V"

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Exhibit W
Annexed to Affidavit of
James J. Shay

Memorandum of a Conference of the Board of Mediation and Conciliation held in the rooms of the Building Trades Employers' Association on Friday, August 29, 1975

DISPUTANTS:	Between Tapers Local 1974 and Plasterers Locals 60 and 202.
WORK IN QUESTION:	Pointing and Taping of Drywall Surfaces to Receive Paint.
JOBS:	1) Kent Village, Brooklyn 2) Waverly Place, N.Y.C.
CONTRACTOR:	1) Prince Carpentery 2) Interstate Lathing

The parties were called before the Board of Mediation and Conciliation consisting of William A. Canavan, Secretary, representing H. Earl Fullilove, Chairman, Board of Governors, Building Trades Employers' Association, and in the absence of Peter J. Brennan, President, Building and Construction Trades Council, Thomas W. Tobin, Assistant to the President, to settle the controversy by mediation or conciliation, if possible.

Mr. Tobin presided and Mr. Canavan acted as secretary.

PRESENT:

REPRESENTING TAPERS LOCAL 1974:
Messrs. John Alfarone
James Shay
Frank Alfarone
Joseph Giordano

REPRESENTING PLASTERERS:
Messrs. Frank G. Rossetti, Vice President, O.P.& C.M.I.A.
Michael Canuso, Vice Pres. O.P.& C.M.I.A.
Vincent J. DiCrestofolo, Local 202
Louis Euvino, Local 60

EXHIBIT "W"

Relative to the Kent Village job; representatives of the Tapers contended - and submitted supporting documents - that they had commenced work on the project in April; that due to scheduling of the job, there were no Tapers on the project for a period of time thereafter; and that, when the work recommenced, Plasterers had been assigned to perform the work in question. Representatives of the Plasterers did not dispute these facts.

Mr. Shay contended that facts clearly indicated a "chang of assignment" and requested that the Chairman effect his powers under the Procedural Rules and Regulations of the Impartial Jurisdictional Disputes Board; specifically that section relative to "change of assignments" which is Sections 3 A, B, and C under the paragraph entitled "Contractor's Responsibility".

Mr. Canavan inquired as to the nature of the material being used to perform the work and Mr. Shay responded that it was the position of the Tapers that the nature of the material was of no consequence. He again stated that this instance was a case of change of assignment and that in cases of this nature only the fac of change of assignment ought to be considered.

Mr. Canavan noted that in the intervening period while neither trade was performing the work in question the Executive Cc mittee of the Building Trades Employers' Association had rendered decision on a similar case (185-1a) involving the application of

EXHIBIT "W"

16 - 75

a product known as Sta Smooth and inquired of Mr. Shay whether the material in this case was Sta Smooth and if it were ought that fact not to be considered in reviewing the question of change of assignment.

Mr. Shay granted that the material in this case was Sta Smooth but reiterated that the intervening decision cited by Mr. Canavan was extraneous to the issue of change of assignment.

Mr. Rossetti stated that the material was Sta Smooth, a plaster material, and that in no circumstance would Plasterers refuse to perform work involving the application of plaster material when so assigned by a contractor.

Messrs. Tobin and Canavan considered the request of Mr. Shay to rule on the issue of change of assignment without regard to surrounding facts and circumstances and stated that they would reserve decision on the matter.

Relative to the Waverly Place job; it was granted that the work in question was being performed by Plasterers. However, representatives of the Tapers contended that the work in question, that is, the pointing and taping of drywall surfaces to receive paint, was covered by the Memorandum of Understanding of November 20, 1961 between the following Internationals -- Operative Plasterers' and Cement Masons' International Association of the United States and Canada; Bricklayers, Masons and Plasterers' International Union of America; and Brotherhood of Painters, Decorators and Paperhangers of

EXHIBIT "W"

America - The specific section to which representatives of the Tapers referred was Section F. A copy of the memo is attached to these minutes.

The Tapers also submitted a telegram from General President S. Frank Raftery indicating that the memo in question was still in effect.

Representatives of the Plasterers indicated that the memo in question had been abrogated and had no bearing on the work in question or on the assignment.

It was determined that official correspondence from the Operative Plasterers' and Cement Masons' International Association of the United States and Canada ought to be provided regarding their position on the November 29, 1961 memo before additional action in this matter is undertaken.

The meeting adjourned.

Secretary.

EXHIBIT "W"

EXHIBIT "W"

PLASTERERS

MEMORANDUM OF UNDERSTANDING
between
OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA
BRICKLAYERS, MASONS, AND PLASTERERS' INTERNATIONAL UNION OF AMERICA
and
BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA
November 29, 1961

This Agreement has been entered into between the Operative Plasterers' and Cement Masons' International Association of United States and Canada (O.P. & C.M.I.A.), the Bricklayers, Masons and Plasterers' International Union of America (B.M. & P.I.U. of A.), and the Brotherhood of Painters, Decorators and Paperhangers of America (B. of P.D. & P.H. of A.) for the purpose of improving relations between the three International Unions and to facilitate the settlement of jurisdictional disputes directly and promptly between the three Organizations or any two of them, and in order to establish an understanding that will mutually assist each of the signatory parties to secure and to perform work coming within their recognized jurisdiction.

It is expressly understood and agreed that this Agreement shall not relate to nor have any bearing on jurisdictional disputes that may now exist or may in the future occur between any of the parties hereto and any other International Union or subordinate body thereof not parties hereto.

The parties signatory to this Agreement recognize each other's right to use the basic tools necessary to perform work outlined in the following sections of this Agreement:

The term Plasterer or Cement Mason as used hereafter in this Agreement shall be construed to mean members or applicants for membership of the O.P. & C.M.I.A. or Plasterer or Cement Mason members or applicants for such membership of the B.M. & P.I.U. of A.

The term Painters as used hereafter in this Agreement shall be construed to mean members or applicants for membership of the B. of P.D. & P.H. of A.

A. CORRECTION OF IMPERFECTIONS INCLUDING

COATINGS RELATED TO FINISHING ON NEW OR OLD CONCRETE SURFACES.

1. It is agreed that all chipping, cutting, grinding, patching and rubbing of concrete surfaces necessary to correct imperfections caused by sagging, bulging or separation of concrete forms, or by the deterioration, scaling or cracking of concrete, shall be performed by Cement Masons.*

2. It is agreed that, where concrete surfaces are to receive materials recognized as the work of the Painter, and Cement Masons have performed and completed the operations outlined in paragraph 1, or where the conditions of the concrete surfaces is such as not to require any of the operations outlined in paragraph 1, the Painter shall do such pointing, preparatory to painting, as may be required to complete their work, provided such pointing shall not include the filling of air holes that exceed a diameter of ⅛".*

*Picture illustrations of the work belonging to either the Painter or Cement Mason appear on Pages 6 and 7.

3. (a) It is agreed that the application of a brush-coat of cement-base material as part of the operation of patching concrete is the work of Cement Masons when the color of the cement-base material is substantially the same as the surface to which it is applied.

(b) Where the brush-coat of cement-base materials is applied for purposes other than described in 3(a) above the work will belong to Painters.

B. PREPARATION FOR AND APPLICATION OF WATERPROOFING MATERIALS FOR STOPPING LEAKS IN CONCRETE AND MASONRY UNITS.

1. All chipping and cutting of concrete that is necessary to trace sources of leakage and to prepare concrete surfaces, for installation materials used in stopping leakage shall be under the jurisdiction of Plasterers or Cement Masons.

2. All chipping and cutting of Masonry Units that is necessary to trace sources of leakage and to prepare surfaces of such units for installation of materials used in stopping leakage in such units shall be the work of members of the B.M. & P.I.U. of A.

3. The installation of materials used in the stopping of leaks in concrete shall be under the jurisdiction of Plasterers or Cement Masons.

C. APPLICATION OF WATERPROOFING AND DAMPPROOFING MATERIALS TO CONCRETE SURFACES.

1. The application of non-decorative** materials for waterproofing or dampproofing purposes on new or old concrete shall be the work of Cement Masons of the B.M. & P.I.U. of A. or the O.P. & C.M.I.A. of U.S. & C.

**For purposes of defining the term "non-decorative" it shall mean:

a. Sand and cement coats, with or without damp or waterproofing additive, where no color is added—

249a

250a

b. Sand and cement coats, with or without damp or waterproofing additive substantially the same color as the surface to which it is applied—

c. Damp and waterproofing materials, identified as such by the manufacturers, which is substantially the same color as the surface to which it is applied.

2. The application of decorative*** materials for waterproofing or dampproofing purposes shall be the work of the Painter.

***For purposes of defining the term "decorative" it shall mean:

a. Sand and cement coats, with or without damp or waterproofing additive, where color is added to the material—
(This shall not be construed to deny the Plasterer the right to apply waterproofing plaster to these surfaces wherever it is specified.)

b. Sand and cement coats, with or without damp or waterproofing additive, when the color is not substantially the same as the surface to which it is applied—

c. Damp and waterproofing material, identified as such by the manufacturer, where the color is not substantially the same as the surface to which it is applied—

d. All paint materials, identified as such by the manufacturer, regardless of color or method of application.
("Substantially the same" shall be white or gray cement or clear silicone, and shall apply under the "non-decorative" as well as "decorative" paragraphs of this Section.)

D. APPLICATION OF CEMENT BASE WASH COAT TO EXTERIOR PLASTERED SURFACES.

1. The application of initial wash coat to exterior plastered surfaces on new work* shall be the work of the Plasterers, providing the wash is substantially the same color as the surface to which it is applied (in all instances gray or white cement base washes are considered to be substantially the same as the plastered surface to which they are applied.)

2. The application of all washes to exterior plastered surfaces, except as defined in paragraph 1 of this Section, shall be the work of the Painters.

*New work as defined in this Section shall also include the major overhaul, renovation, repair or alteration of buildings.

E. THE APPLICATION OF THE FOLLOWING MATERIALS INCLUDING THE CLEANING AND PREPARATION OF CONCRETE FLOOR SURFACES TO RECEIVE CONCRETE STAINS, SEALERS, CURERS, HARDENERS AND WAXES.

1. The above materials included in concrete prior to pouring, or in the finishing process performed during the curing period (not to exceed one week) is the work of the Cement Mason.

2. After the curing period of one week has expired the application of all above materials is the work of Painters.

F. POINTING, TAPING AND TEXTURING DRYWALL SURFACES.

1. All pointing and taping of drywall, regardless of material used, is Painters' work providing the drywall surfaces are not to receive plaster, acoustical or imitation acoustical finishes. The application of texturing to drywall surfaces is the work of Painters where paint materials are used.

2. The application of plaster, acoustical or imitation acoustical finishes shall be the work of the Plasterers, as well as the preparatory pointing and taping of drywall surfaces that are to receive these finishes.

If a dispute should arise over the interpretation or application of this Agreement, the two business agents of the respective unions shall make a conscientious endeavor to settle the dispute locally. Should the business agents fail to consummate a satisfactory understanding, they shall immediately draw up a joint or similar report decribing disputed work, including pictures and specifications of the work in dispute, and forward it to the Presidents of their respective International Unions.

Disputes forwarded to the respective General Presidents shall be referred to a designated representative for immediate adjustment.

There shall be no stoppage of work while the dispute is in process of settlement.

An Administrative Committee composed of one representative from each International Union shall be designated by the respective General Presidents to meet periodically to review work covered by this Agreement and to consider any problems which arise in order to adjust same.

Signed this November 29th, 1961

Approved by the General Executive Board of the Brotherhood of Painters, Decorators and Paperhangers of America

L. M. RAFTERY, *General President*
Brotherhood of Painters Decorators and Paperhangers of America

Approved by the General Executive Board of the Bricklayers, Masons and Plasterers' International Union of America

JOHN J. MURPHY, *President*
Bricklayers, Masons and Plasterers International Union of America

Approved by the General Executive Board of the Operative Plasterers and Cement Masons' International Association of the United States and Canada

EDWARD J. LEONARD, *General President*
Operative Plasterers' and Cement Masons' International Association of the United States and Canada

Exhibit "W"

Exhibit X
Annexed to Affidavit of
James J. Shay

Q You did not discuss the question of whether or not this was finishing of the dry wall or preparatory to painting; is that correct?

MR. KREISBERG: Objection. The decision speaks for itself.

MR. HALL: You did not object to the question before.

THE ARBITRATOR: I will allow the question.

Q You did not discuss the question of whether this was a dry wall finishing preparatory to painting?

A No. It was only the application of one of the tapers using Sta-Smooth.

Q There were three questions that could have been before you, and only one was heard and decided?

MR. KREISBERG: I object to the characterization. Anything could have been done. The question was, what was before him?

Q Of the three questions which I have just defined, the only one heard by you and decided by you was the question of the nature of the material, is that correct, whether it was adhesive or plaster material?

A The use of Sta-Smooth.

Q In fact, during the course of the hearing, Mr. Alfarone, in attempting to show some things about the nature

EXHIBIT "X"

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I would like to get into a voir dire on this document, before any further questioning, to determine the basis of this witness' knowledge of the document, before these further questions on it.

THE ARBITRATOR: Has it been offered in evidence?

MR. HALL: It has not been offered in evidence.

THE ARBITRATOR: He is objecting to your question.

First of all, have we established that this witness has any knowledge of the terms of this agreement?

MR. KREISBERG: No, we have not.

MR. HALL: I don't think it is a proper objection. He said he knows of this agreement. I am asking him whether there was any decision to --

MR. KREISBERG: He testified he knows about the agreement. He did not testify he is familiar with the terms.

MR. HALL: He knows what the BTEA decided. I want to know whether they decided on this.

THE ARBITRATOR: If he knows.

MR. HALL: Yes.

Q To your knowledge, did the BTEA make any decision or attempt to make any decision on this basis?

EXHIBIT "X"

A I don't know what is in the minds of the men that voted. I know Mr. Alforone made reference to this in his presentation to the Executive Committee.

Q You testified earlier that the question of whether or not this was work done preparatory to painting was not before the BTEA and not decided before the BTEA?

A It was used in the statement of material for forming and taping.

Q The question waether this was finishing preparatory to painting was not decided?

MR. KREISBERG: Objection.

MR. HALL: I want to clear it up.

I want to make sure he understands the question.

THE ARBITRATOR: Restate it.

Q So that you didn't pass on that, but passed on the other question, a different question, as I stated, namely, the question of whether this dry wall finishing was preparatory to painting or preparatory to something else?

A As I said, if the use of the material was the question before us.

Q Yes?

A Now, what the finish would be, if it was tape, I don't know.

EXHIBIT "X"

Q That was not before you; is that correct?

A Yes.

Q So that your decision was limited to the question of whether this was adhesive material or plaster material?

MR. KREISBERG: Objection, already asked and answered.

THE ARBITRATOR: Sustained. You have been over that ground, counsel. You have established what the basis was.

Q Now, I ask you to look at this document. I draw your attention to what has been marked as page 4, under F:

"1. All painting and taping of dry wall, regardless of material used, is painters' work, providing the dry wall surfaces are not to receive plaster, accoustical or imitation accoustical finishes. The application of texturing to dry wall surfaces is the work of painters where paint materials are used.

"2. The application of plaster, accoustical or imitation accoustical, finishes, shall be the work of the plasterers, as well as the preparatory pointing and taping of dry wall surfaces that are to receive these finishes."

Your BTEA Board did not have before it that

EXHIBIT "X"

question or decide on that question; is that right?

A That's right.

Q I draw your attention to the paragraph immediately under that, which reads:

"If a dispute should arise over the interpretation or application of this agreement, the two business agents of the respective unions shall make a conscientious endeavor to settle the dispute locally. Should the business agents fail to consummate a satisfactory understanding, they shall immediately draw up a joint or similar report describing the disputed work, including pictures and specifications of the work in dispute, and forward it to the Presidents of their respective international unions."

That proceeding does not contemplate, to your understanding, a decision by the Building Trades Executive Committee?

MR. KREISBERG: Objection.

THE ARBITRATOR: Sustained.

Q Is that correct?

MR. KREISBERG: Objection.

THE ARBITRATOR: Sustained.

Q In other words, the BTEA did not decide that question?

MR. KREISBERG: Objection.

EXHIBIT "X"

A I answered that a number of times, it is in the record, that they have not.

MR. KREISBERG: We are going back and forth several times.

MR. HALL: I offer the document in evidence. Are you asking for a voir dire?

MR. KREISBERG: Yes.

VOIR DIRE EXAMINATION

BY MR. KREISBERG:

Q Mr. Fullilobe, are you familiar with the terms of this agreement?

A I am generally familiar with certain parts of it, but I wouldn't say I can quote the agreement for you, if that is what you want.

Q You did not participate in the negotiations for this agreement, did you?

A No.

Q You did not participate in the preparation of this agreement, did you, sir?

A No.

Q And, in fact, I ask you to look through this document now. Can you specify with certainty if this, in fact, represents -- that the agreement in this document, in fact, represents the agreement between the plasterers

EXHIBIT "X"

and the painters?

A It says "Memorandum of Understanding," and I think I would have to assume that it is a memorandum of understanding.

Whether it is still in full force and effect, I have no way of knowing.

Q You don't have sufficient knowledge of the terms of this document to know whether it is an authentic document or not, do you?

A I have no way of knowing that.

MR. KREISBERG: I am going to object to this exhibit, on the basis there is no proper foundation.

I am not sure of the terms of the examination that has been made, and the witness has been asked to testify as to the validity or the substance of it.

MR. HALL: He has recognized it as something he knows about, the agreement. I do have another witness here who can identify it.

MR. KREISBERG: He did not testify to that.

THE ARBITRATOR: He testified, as I understand it, that he was aware that there was an agreement.

He testified that, on looking at this document, this seemed to be, as far as he knew, the document that was being described.

EXHIBIT "X"

Exhibit Y
Annexed to Affidavit of
James J. Shay

Y

INTERNATIONAL BROTHERHOOD OF
PAINTERS and ALLIED TRADES
UNITED UNIONS BUILDING. 1750 NEW YORK AVE., N.W., WASHINGTON, D.C. 20005
OFFICE OF S. FRANK RAFTERY, GENERAL PRESIDENT • (202) 872-1444

GLAZIERS AND
GLASS WORKERS
SIGN PAINTERS AND
SCENIC ARTISTS
CARPET AND LINOLEUM
PAINT MAKERS
and Allied Industrial Workers

September 4, 1973

COPY

Mr. Harry P. Taylor
Chairman
Joint Administrative Committee
Plan for Settlement of
Jurisdictional Disputes
in the Construction Industry
815 - 16th Street, N.W.
Washington, D.C. 20006

Mr. Robert A. Georgine
Vice Chairman
Joint Administrative Committee
Plan for Settlement of
Jurisdictional Disputes
in the Construction Industry
815 - 16th Street, N.W.
Washington, D.C. 20006

Gentlemen:

Reference is made to your letter dated May 12, 1975 regarding the April 9, 1975 action of the Joint Administrative Committee relative to Article VII, Section 5 of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.

Your letter stated that the Joint Administrative Committee considers provisions in local collective bargaining agreements which seek to establish work jurisdiction on a unilateral basis and that inflict monetary penalties or arbitration awards against employers because of work jurisdiction are in violation of Article VII, Section 5 of the Plan.

Recently one of our affiliates, Drywall Tapers and Painters Local Union No. 1974, New York City, requested mediation through the procedures of the New York Plan on the question of a change of original assignment over the painting and taping of drywall involving Tapers and Plasterers, Metro North project, 101/102 Street and East River Drive, New York, New York, Cavanaugh Construction Company contractor, National Wall System Inc. subcontractor.

At the mediation Edward J. Cleary, representative for the Building and Construction Trades Council, and H. Earl Sullivan, representative for the Building Trades Employers' Association of New York City, determined that a change of original assignment did not constitute a jurisdictional dispute and the mediation was adjourned without settlement.

EXHIBIT "Y"

BEST COPY AVAILABLE

Subsequently another mediation was held between the parties without settlement and the matter was then referred to arbitration for the purpose of considering the dispute on its merits. On June 12, 1975 the Building Trades Employers' Association notified the parties that the Executive Committee finds that the material (Sta-Smooth) used for pointing, taping and filling of joints on drywall is a plaster material and is the work of the Plasterer.

In conformity with the Procedural Rules and Regulations of the Impartial Jurisdictional Disputes Board, we filed a timely request for appeal with Fred J. Driscoll, Jr., Chairman of the Impartial Jurisdictional Disputes Board. On June 20, 1975 we received a notice from Mr. Driscoll that the Board had decided to accept our request for appeal and that the matter was to be considered on July 10, 1975. This was later changed to July 17, 1975.

Sometime thereafter Mr. Driscoll notified us that our request for appeal was denied as Tapers Local Union 1974 was alleged to be in violation of Article VII, Section 5 of the Plan for pursuing arbitration for the purpose of determining whether or not the contractor violated Article XVI, Sections 1, 3 and 5 of their collective bargaining agreement, which reads as follows:

> "ART. XVI. Section 1. Employers shall not sub-let or sub-contract to Journeymen or to any Employer not under contract with the Union any taping, pointing or other work done by members of the Union. Employers shall not otherwise sub-let such work except under conditions covered by this Trade Agreement.
>
> * * * *
>
> "Section 3. Each Employer shall notify the Joint Board on the proper form upon receiving a contract award from any Builder, Owner Builder, General Contractor, or other contractor. Once any Employer has been awarded a contract, it shall be a violation of this Agreement to sub-contract or re-subcontract the same contract award to another employer.
>
> * * * *

EXHIBIT "Y"

BEST COPY AVAILABLE

"Section 5. The Association and the Union agree to the elimination of lumping (the subcontracting of labor without material). Every employer or subcontractor must furnish both labor and material complete under one contract."

It is our contention that the charge against the contractor as set forth above is not in violation of Article VII, Section 5 of the Plan. In support of this, we wish to advise that the local collective bargaining agreement of Local Union 1974 and the contractor does contain language that binds them to the New York Plan.

Therefore, we are requesting a determination from the Joint Administrative Committee as to whether or not a union is considered to be in violation of Article VII, Section 5 of the Plan for seeking a ruling on the specific questions of (a) subcontracting to journeyman and other employers performing work not consistent with the terms of their agreement; (b) failure to submit proper notice upon receiving a contract award; and (c) lumping (the subcontracting of labor without material).

If the Joint Administrative Committee finds that Local Union 1974 is not in violation of Article VII, Section 5 of the Plan, we further request that the Impartial Jurisdictional Disputes Board be notified to immediately schedule a meeting date for the purpose of considering our appeal, which we deem to be unjustly denied.

Very truly yours,

S. FRANK RAFTERY
General President

bcc: GVP Wolford
GR DiSilvestro
SR Blum
Bus. Mgr. Alfarone, LU 1974
David S. Barr, Esq.
Burton H. Hall, Esq.

EXHIBIT "Y"

2633

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for
Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.
Dated,

Yours, etc.,

Attorney for
Office and Post Office Address

To

Attorney(s) for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Index No. Year 19

75CIV 4289CMM

DRYWALL TAPERS etc. et al.,

Plaintiffs

-against-

OPERATIVE PLASTERERS etc. et al.,

Defendants

AFFIDAVIT

BURTON H. HALL
Attorney for Plaintiffs
Office and Post Office Address, Telephone

401 Broadway
New York, N.Y. 10013
(212) 431-9114

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

Supplemental Affidavit of
James J. Boyle in Support of Motion
to Dismiss, etc.

Assigned to Judge Metzner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,	)	
and	)	
CHARLES LONG, et al., individually, etc.,	)	
Plaintiffs,	)	
v.	)	75 Civ. 4289 C M M
OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al.,	)	
Defendants.	)	

SUPPLEMENTAL AFFIDAVIT OF JAMES J. BOYLE

DISTRICT OF COLUMBIA: ss

James J. Boyle, being duly sworn, deposes and says that:

1. Your deponent is a Vice President of the Operative Plasterers' and Cement Masons' International Association (hereinafter "OPCMIA" or "International") and is the same James J. Boyle who executed an affidavit on the 15th day of September, 1975 which was filed in this case in support of Defendants OPCMIA and Local 60's Motion to Dismiss the Complaint.

2. Subsequent to the filing of deponent's first affidavit, the OPCMIA received a letter on September 19, 1975 from George Meany, President of the AFL-CIO , with an attached letter from the General President of the International Brotherhood of Painters and Allied Trades (hereinafter "Painters") in which Mr. Meany advised the OPCMIA that the Painters had filed a charge against the OPCMIA under Article XX of the AFL-CIO Constitution alleging that the OPCMIA had interferred with the established collective bargaining relationship between the Painters and the

Metropolitan New York Drywall Contractors Association, Inc. (see attached Exhibits 18 and 19). 266a

3. Mr. Meany has advised Mr. Power, General President of the OPCMIA, that a mediation session is scheduled for October 14, 1975 at the AFL-CIO Building in Washington, D.C. on the charge filed by the Painters.

4. Article XX of the AFL-CIO Constitution, entitled "Settlement of Internal Disputes" provides in Section 2 that:

> Each affiliate shall respect the established collective bargaining relationship of every other affiliate. No affiliate shall organize or attempt to represent employees as to whom an established collective bargaining relationship exists with any other affiliate.

The charge filed by the Painters with President Meany claims that the OPCMIA violated this Section because it allegedly interferred with the established collective bargaining relationship that the Painters had with the Metropolitan New York Drywall Contractors Association (a copy of Article XX of the current AFL-CIO Constitution is attached hereto as Exhibit 20).

5. Section 8 of Article XX sets out the initial procedure for the resolution of such charges by providing that they first be heard by a mediator selected from inside the labor movement. Section 9 provides that if a voluntary settlement cannot be reached at the mediation level a hearing shall then be conducted before an Impartial Umpire selected from a panel of Impartial Umpires "composed of prominent and respected persons". Generally the impartial umpires are prominent arbitrators such as David L. Cole and Howard W. Kleeb.

6. A hearing is held before the Impartial Umpire after which a decision is rendered. If an affiliate is found to be in violation of Article XX, President Meany sends a copy of the decision to the unions involved and the union that

was found in violation must notify him as to "what steps it intends to take to comply with such determination" (see Article XX, Section 10).

7. Under Section XX any party to the hearing before the Impartial Umpire has a right to appeal his decision to the President of the AFL-CIO who refers the appeal to a subcommittee of the Executive Council of the AFL-CIO (see Article XX, Section 12). The subcommittee may disallow the appeal in which event the Impartial Umpire's decision is final, or the subcommittee may refer the appeal to the Executive Council, in which event the decision of the Impartial Umpire will be stayed pending disposition of the appeal by the Executive Committee. Where an appeal is granted the decision of the Executive Council is final (see Article XX, Setion 13).

8. Article XX also sets out sanctions imposed on a union in the event an affiliate refuses to comply with the decision of the Impartial Umpire or the Executive Council on appeal (see Article XX, Sections 14-17).

9. By the invocation of Article XX of the AFL-CIO Constitution it appears that the Painters must believe that there is internal union machinery available for the settlement of their dispute with the OPCMIA involving the Metropolitan New York Drywall Contractors Association, Inc., and they are utilizing that procedure at the present time. While the OPCMIA has not yet had an opportunity to consider what position it will take in the Article XX proceeding, the very filing of the charge by the Painters indicates that the Painters are of the opinion that this dispute is covered by Article XX. The filing of this Article XX charge by the Painters appears to contradict the assertion made by Mr. Alfarone in his affidavit filed in this proceeding that

Local 1974 has exhausted "all reasonable remedies available to it outside of the initiation of suit" (Para. 20, Alfarone affidavit).

10. With the institution of this Article XX proceeding, Local 1974 now has pending five different proceedings concerning its dispute with the OPCMIA on bargaining rights and/or jurisdictional claims involving contractors of the Metropolitan New York Drywall Contractors Association, Inc. These proceedings are:

(1) Its appeal to the Administrative Committee from the denial of the Impartial Jurisdictional Disputes Board to hear the Metro North dispute while arbitration was pending (see Exhibit Y to Shay affidavit).

(2) Its arbitration claim against the contractor on the Metro North project (discussed in deponent's prior affidavit).

(3) The state court proceeding filed on September 12, 1975 by Painters Local 1974 against OPCMIA Local 60 to set aside the arbitration award entered on June 12, 1975, under the New York Plan on the Metro North project.

(4) The Article XX proceeding under the AFL-CIO Constitution discussed in this affidavit.

(5) The instant proceedings in the United States District Court for the Southern District of New York.

11. I have had an opportunity to review the affidavit filed in this matter by James J. Shay on behalf of the Plaintiff Painters Local 1974, and while not attempting to answer each of the statements therein (many of which I disagree with) I will comment on a few of Mr. Shay's statements.

12. Contrary to Mr. Shay's statement in Paragraph 4 of his affidavit, the note on the inside cover of the 1961 Memorandum of Understanding does not state that it supersedes all previous "determinations" between the Painters and the OPCMIA. That note states that it "is to supersede any and all agreements or understandings either written or oral, which have been in use over the years . . . ." The 1947 Decision of Record in the Green Book (referred to in Paragraph 15A of my prior affidavit

is just that, a "Decision" rendered by a Referee of the Building and Construction Trades Department of the AFL-CIO, and it is not covered by the note on the inside cover of the 1961 Memorandum of Understanding. That note has reference to prior agreements between the Painters and the OPCMIA such as the Agreement of November 29, 1956.

13. Furthermore, in requesting job decisions from the Impartial Jurisdictional Disputes Board the Painters have consistently based their requests on the 1947 Decision of Record in the Green Book and only secondarily on the 1961 Memorandum of Understanding (see, e.g. Exhibits 21-24). Many of these attached exhibits refer to cases which are discussed in Paragraph 6 of Mr. Shay's affidavit.

14. Contrary to the impression Mr. Shay attempts to convey in Paragraph 12 of his affidavit, that the Painters have been complying with the 1961 Memorandum of Understanding, they have not been complying. In addition the Painters over the years have used the 1961 Memorandum of Understanding in an effort to broaden their jurisdiction at the expense of the OPCMIA, far beyond what the Memorandum granted them, and it is for these reasons that the OPCMIA con siders the Memorandum of Understanding to have been abrogated by the Painters.

Furthermore, even when the Impartial Jurisdictional Disputes Board would issue decisions favorable to the OPCMIA, the Painters would generally refuse to comply with the awards.

15. Contrary to the assertions in Paragraphs 12, 13 and 16 of Mr. Shay's affidavit, the mediation meetings conducted under the New York Plan were not in form or substance substitutes for the disputes procedure set forth in the 1961 Memorandum of Understanding. Neither Mr. Rossetti nor Mr. Canuso were the

"designated representatives" of the General President of the OPCMIA as called for under the Memorandum of Understanding. Rather than utilize the procedures set out there for resolution of the dispute, Local 1974 utilized the procedures under the New York Plan. Mr. Rossetti and Mr. Canuso attended the mediation meetings simply in an effort to assist the New York local involved. Mr. Canuso is also business agent of OPCMIA Local Union No. 852.

16. Mr. Shay's discussion of the August 29, 1975 mediation meeting under the New York Plan (Paragraph 14 of his affidavit) emphasizes the Painters' lack of interest in utilizing the internal union machinery for settling these disputes. It was at the conclusion of that meeting that the instant suit and motion for injunction were served on Mr. Rossetti of the OPCMIA by the Painters' representatives attending that meeting. Certainly, the pleadings in this case took the Plaintiffs a substantial amount of time to prepare and they must have been ready even before the mediation meeting began.

17. If the Painters had followed the disputes procedure of the 1961 Memorandum of Understanding on any dispute they would not now be having to rationalize their failure to do so by claiming a request to the General President of the OPCMIA would be futile (Paragraphs 17 and 18 of Mr. Shay's affidavit). Such a request to the General President of the OPCMIA would not have been futile and would have been treated as a serious matter with his designated representative assigned to investigate the situation with an open mind regardless of any position previously taken by an International officer who was not assigned to the dispute by the General President.

18. Contrary to Mr. Shay's assertion in Paragraph 18, the Impartial Jurisdictional Disputes Board has not termed

the failure to exhaust the machinery of the 1961 Memorandum "of no consequence". What the Impartial Jurisdictional Disputes Board said is that the duty to administer and follow the procedures of an agreement or understanding is that of the parties themselves and not that of the Board" (see Exhibit H to Shay affidavit). Indeed, as I pointed out in my prior affidavit, the General President of the Painters on January 28, 1972, complained about the predecessor to the Impartial Jurisdictional Disputes Board hearing cases before the disputes procedure under the Memorandum of Understanding was complied with. He stated then, "We will continue to insist that the disputes procedures, as outlined in the Memorandum, be fully recognized and implemented."

19. Although Mr. Shay now claims that "the plaster material vs. adhesive material" issue is irrelevant (Paragraphs 21-23, he fails to explain why it was Local 1974 which vigorously pursued the issue in mediation and arbitration under the New York Plan and even had a laboratory analysis made of the material in question at the May 15, 1975 mediation (see Exhibits U and V of Shay affidavit). In fact, the minutes of those meetings show that Local 1974 was relying on the 1947 Decision of Record, not the 1961 Memorandum of Understanding.

20. If the Painters had proceeded to the appeal before the Impartial Jurisdictional Disputes Board, contrary to Mr. Shay's assertion (Paragraph 24), that Board could have resolved the basic issue in the case; i.e. who should be assigned the work at issue. Mr. Shay should know that the Impartial Jurisdictional Disputes Board would not merely be limited to considering whether the material being used was plaster or adhesive regardless of what the New York Board decided (see Paragraph 24 of Shay affidavit).

21. Mr. Shay's arguments in Paragraphs 24 and 25 of his affidavit should more properly be addressed to the Joint Administrative Committee which supervises the Impartial Jurisdictional Disputes Board in the appeal which the Painters presently have underway to the Joint Administrative Committee (see Exhibit Y of Shay affidavit). I may add that Mr. Shay's interpretation of Article VII, Section 5 of the Plan (Paragraph 26) appears contrary to the view of the General Presidents of the unions affiliated with the Building and Construction Trades Department, including the General President of the Painters (see Exhibit 14 to Boyle affidavit).

22. I find it difficult to understand how Mr. Shay can claim no other dispute settlement procedures are available as he does in the heading above Paragraph 19 of his affidavit since prior to the date of his affidavit the Painters filed the Article XX charge against the OPCMIA with President Meany, which has been discussed earlier in this affidavit.

23. Unfortunately, Local 1974 has sought to use an additional forum to wage attacks on representatives of the OPCMIA because of this jurisdictional dispute. In an incredibly libelous letter dated September 17, 1975 and sent to many political leaders in New York City, Local 1974 has personally attacked Mr. Frank Rossetti, a Vice President of the OPCMIA (see Exhibit 25). This attack prompted the Building and Construction Trades Council of Greater New York to repudiate the irresponsible charges of Local 1974 (see Exhibit 26).

JAMES J. BOYLE

Subscribed and sworn to before me
this 1st day of October, 1975.

Notary Public, D.C.

My Commission Expires
November 30, 1977

Exhibit 18
Annexed to Supplemental Affidavit
of
James J. Boyle

11

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

EXECUTIVE COUNC.

GEORGE MEANY, PRESIDENT — LANE KIRKLAND, SECRETARY-TREASURER

JOSEPH D. KEENAN, PAUL HALL, PAUL JENNINGS, A. F. GROSPIRON, PETER BOMMARITO, FREDERICK O'NEAL, JERRY WURF, JAMES T. HOUSEWRIGHT, MARTIN J. WARD, JOSEPH P. TONELLI, C. L. DELLUMS

RICHARD F. WALSH, I. W. ABEL, MAX GREENBERG, MATTHEW GUINAN, PETER FOSCO, FLOYD E. SMITH, S. FRANK RAFTERY, GEORGE HARDY, WILLIAM SIDELL, ALBERT SHANKER, FRANCIS S. FILBEY

LEE W. MINTON, HUNTER P. WHARTON, JOHN H. LYONS, C. L. DENNIS, THOMAS W. GLEASON, LOUIS STULBERG, ALEXANDER J. ROHAN, AL H. CHESSER, MURRAY H. FINLEY, SOL STETIN, GLENN E. WATTS

815 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

(202) 637-5000

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September 18, 1975

Mr. Joseph T. Power, President
Operative Plasterers' and Cement Masons'
International Association of the
United States and Canada
1125 17th Street, N. W.
Washington, D. C. 20036

Re: Case No. 75-86
Metropolitan New York Drywall
Contractors Association, Inc.

Dear Sir and Brother:

I am enclosing a copy of a letter received from President Raftery of the International Brotherhood of Painters and Allied Trades alleging that your organization is in violation of Article XX of the AFL-CIO Constitution in the above captioned case.

A mediation session is scheduled for October 14, 1975, at 10:00 a.m., in my office, in the AFL-CIO Building, Washington, D. C., with Secretary-Treasurer Hall of the Retail Clerks International Association as mediator.

Please advise me who will represent your organization at this meeting.

Sincerely and fraternally,

George Meany

President

Enclosure

cc: Mr. S. Frank Raftery
Mr. Peter Hall

RECEIVED SEP 19 1975

Exh 18

Exhibit 19
Annexed to Supplemental Affidavit
of
James J. Boyle

INTERNATIONAL BROTHERHOOD OF

PAINTERS and ALLIED TRADES

UNITED UNIONS BUILDING. 1750 NEW YORK AVE., N.W., WASHINGTON, D.C. 20006

OFFICE OF S. FRANK RAFTERY. GENERAL PRESIDENT • (202) 872-1444

GLAZIERS AND
GLASS WORKERS
SIGN PAINTERS AND
SCENIC ARTISTS
CARPET AND LINOLEUM
PAINT MAKERS
and Allied Industrial Workers

Q 276a

September 15, 1975

Mr. George Meany
President, AFL-CIO
815 Sixteenth Street, N.W.
Washington, D.C. 20006

Dear Sir and Brother:

The International Brotherhood of Painters and Allied Trades charges the Operative Plasterers and Cement Masons International Association with a violation of Article XX, Section 2, for its interference with our established collective bargaining relationship with Metropolitan New York Drywall Contractors Association, Inc. and its affiliated members.

Due to the serious nature of this problem, we respectfully request that this matter be referred directly to the Impartial Umpire for determination.

Sincerely and fraternally,

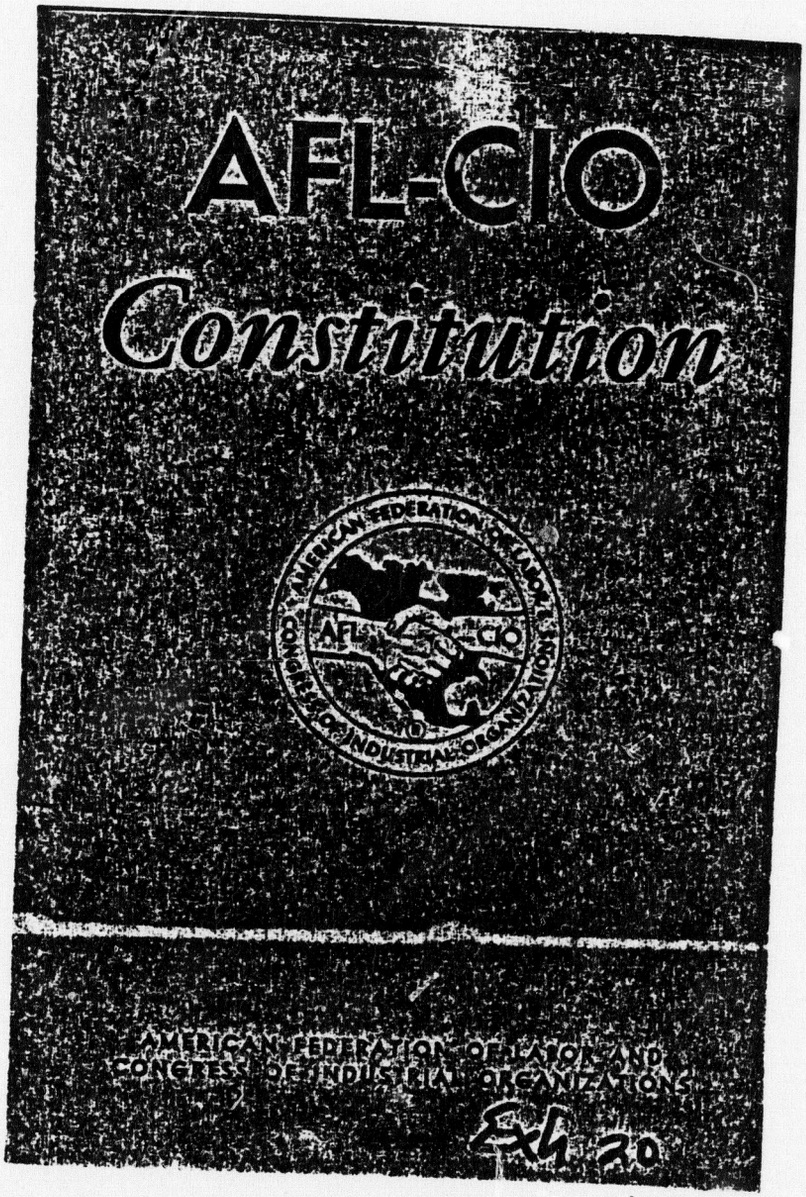
S. Frank Raftery

S. FRANK RAFTERY
General President

RECEIVED
SEP 16 1975
RECEIVED SEP 19 1975

Exh 19

Exhibit 20
Annexed to Supplemental Affidavit
of
James J. Boyle


AFL-CIO
Constitution
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
Ex 20

rectly affiliated local unions shall each be entitled to a total number of votes based upon the membership represented by such delegation at the conventions of the American Federation of Labor and the Congress of Industrial Organizations approving this constitution. State and local central bodies and national departments shall each be represented by one delegate and shall each be entitled to one vote.

Sec. 5. The Joint AFL-CIO Unity Committee shall report to the convention, designate temporary officers for the convention, appoint all convention committees, and take such other action with respect to the conduct of the convention as may become necessary by virtue of the fact that it is an initial convention.

ARTICLE XIX

EFFECTIVE DATE

This constitution and the Merger Agreement between the American Federation of Labor and the Congress of Industrial Organizations shall become effective upon approval by the separate conventions of the American Federation of Labor and the Congress of Industrial Organizations and shall govern the affairs of the Federation beginning with the first convention of the Federation.

ARTICLE XX

SETTLEMENT OF INTERNAL DISPUTES

Section 1. The principles set forth in this Article shall be applicable to all affiliates of this Federation,

and to their local unions and other subordinate bodies.

Sec. 2. Each affiliate shall respect the established collective bargaining relationship of every other affiliate. No affiliate shall organize or attempt to represent employes as to whom an established collective bargaining relationship exists with any other affiliate. For purposes of this Article, the term, "established collective bargaining relationship" means any situation in which an affiliate, or any local or other subordinate body thereof, has either (a) been recognized by the employer (including any governmental agency) as the collective bargaining representative for the employes involved for a period of one year or more, or (b) been certified by the National Labor Relations Board or other federal or state agency as the collective bargaining representative for the employes.

Sec. 3. Each affiliate shall respect the established work relationship of every other affiliate. For purposes of this Article, an "established work relationship" shall be deemed to exist as to any work of the kind which the members of an organization have customarily performed at a particular plant or work site, whether their employer is the plant operator, a contractor, or other employer. No affiliate shall by agreement or collusion with any employer or by the exercise of economic pressure seek to obtain work for its members as to which an established work relationship exists with any other affiliate, except with the consent of such affiliate. This section shall not be applicable to work in the railroad industry.

Sec. 4. In the event that any affiliate believes that such special and unusual circumstances exist that it would be violative of its basic jurisdiction or contrary to basic concepts of trade union morality or to the constitutional objectives of the AFL-CIO or injurious to accepted trade union work standards to enforce the principles which would apply in the absence of such circumstances, such organization shall nevertheless observe such principles unless and until its claim is upheld in the manner prescribed in Section 17 of this Article.

Sec. 5. No affiliate shall, in connection with any organizational campaign, circulate or cause to be circulated any charge or report which is designed to bring or has the effect of bringing another affiliate into public disrepute or of otherwise adversely affecting the reputation of such affiliate or the Federation.

Sec. 6. Dispute settlements and determinations under this Article shall not determine the general work or trade jurisdiction of any affiliate but shall be limited to the settlement or determination of the specific dispute on the basis of the facts and considerations involved in that dispute.

Sec. 7. The President shall establish procedural rules for the handling of complaints under this Article so that all affiliates involved in or affected by a dispute will have notice thereof, will have an opportunity for the voluntary settlement of the dispute, and, in the event of a failure to reach a voluntary settlement, will have a full and fair hearing

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before an Impartial Umpire. The rules shall be such as to insure a speedy and early disposition of all complaints arising under this Article.

Sec. 8. The President shall establish a panel of mediators composed of persons from within the labor movement. The members shall serve at the pleasure of the President. Any affiliate which claims that another affiliate has violated this Article may, by its principal officer, file a complaint with the President. Upon receipt of such complaint the President shall designate a mediator or mediators, selected by him from the mediation panel, and direct that all affiliates involved or affected meet with such mediator or mediators in an effort to effect a settlement.

Sec. 9. A panel of Impartial Umpires composed of prominent and respected persons shall be established. The members of the panel shall be selected by the President with the approval of the Executive Council. If voluntary settlement of a dispute is not reached within fourteen days after the appointment of a mediator or mediators, a hearing shall be held before an Impartial Umpire selected from such panel. Impartial Umpires shall be assigned on a rotating basis, subject to their availability to conduct hearings. The terms of employment of the members of the panel shall be established by the President, with the approval of the Executive Council.

Sec. 10. The Impartial Umpire shall make a determination, after hearing, based upon the principles set forth in this Article. He shall make such deter-

mination within a time specified by the President, unless an extension of time is agreed to by the parties. The President shall transmit copies of the determination to all affiliates involved. He shall, at the same time, request any affiliate which the Impartial Umpire has found to be in violation of this Article to inform him as to what steps it intends to take to comply with such determination. Any response received, or the fact that no response has been received within a time fixed by the President, shall be communicated to the other parties to the dispute.

Sec. 11. The President may extend any time limit if, in his judgment, such extension will more readily effectuate an early settlement or determination of a dispute. Whenever, in the judgment of the President, pressing reasons require an accelerated settlement or determination, he may shorten or eliminate the mediation process or refer the dispute directly to an Impartial Umpire.

Sec. 12. If no appeal is filed from a determination of the Umpire within five days as provided below the determination shall automatically go into full force and effect. Any affiliate which is adversely affected by a determination of the Umpire, and which contends that the determination is not compatible with this Constitution, or not supported by facts, or is otherwise arbitrary or capricious, may file an appeal with the President within five days after it receives the Umpire's determination. Any such appeal shall be referred by the President to a subcommittee of the Executive Council.

Sec. 13. The subcommittee of the Executive Council may disallow the appeal, in which event the determination of the Umpire shall be final, and subject to no further appeal and shall go into full force and effect; or the subcommittee may refer the appeal to the Executive Council, in which event the determination of the Umpire shall be automatically stayed pending disposition of the appeal by the Executive Council. The determination of the Umpire shall be sustained unless it is set aside or altered by vote of a majority of all of the members of the Executive Council. The decision of the Executive Council where an appeal is granted shall be final, and shall be effective as of the date therein specified.

Sec. 14. Any affected affiliate may file a complaint with the President that another affiliate has not complied with an effective determination of the Impartial Umpire or of the Executive Council on appeal. Upon receipt of such a complaint the President shall immediately convene a meeting of the subcommittee of the Executive Council referred to above. If non-compliance with the determination is found at such meeting, notice of such non-compliance shall be issued by the President to each affiliated national or international union and department.

Sec. 15. Immediately upon the issuance of such notification, the following shall apply:

(1) The non-complying affiliate shall not be entitled to file any complaint or appear in a complaining capacity in any proceeding under this

Article until such non-compliance is remedied or excused as provided in Section 16;

(2) The Federation shall, upon request, supply every appropriate assistance and aid to any organization resisting the action determined to be in violation of this Article;

(3) The Federation shall appropriately publicize the fact that the affiliate is not in compliance with the Constitution;

(4) No affiliate shall support or render assistance to the action determined to be in violation of this Article.

In addition, the Executive Council is authorized, in its discretion, to:

(1) Deny to such an affiliate the use of any or all of the services or facilities of the Federation;

(2) Deny to such an affiliate any protection under any of the provisions or policy determinations of the Federation;

(3) Apply any other authority vested in the Executive Council under this Constitution.

Sec. 16. Any affiliate which has been found to be in non-compliance and which has been deprived of its rights under this Article may apply for restoration of such rights. Notice of such application shall be given to all of the affiliates involved in the determination or determinations as to which there is non-compliance. If such affiliates consent, the President shall be authorized to restore the rights of the non-complying affiliate after it states its intention in writing to comply thenceforth with the provisions of this Article. If any affiliate involved in the cases

of non-compliance opposes the application, the rights of the non-complying affiliate shall be restored only under the following conditions:

(a) The non-complying affiliate states its intention, in writing, to comply thenceforth with the provisions of this Article;

(b) The non-complying affiliate has undertaken whatever measures may be necessary and practicable to remedy the situation;

(c) The application for restoration of rights is approved by two-thirds vote of the Executive Council, or by a majority vote of the convention.

Sec. 17. Any affiliate which claims justification under Section 4, for action, which would, in the absence of such justification violate the provisions of this Article, shall process its claim, prior to taking action, under the provisions of this Section. Such claim shall set forth the basis upon which the claim is made and the action which the affiliate proposes to take. The claim shall thereafter be processed as provided in this Article except that the determination as to whether the facts justify the proposed action shall not be made by the Impartial Umpire. The Impartial Umpire shall determine whether the proposed action would violate the provisions of this Article in the absence of justification, shall find the facts with respect to the claim of the justification, and submit a report to the Executive Council. The Executive Council shall determine on the report of the Impartial Umpire whether the proposed action would violate the provisions of this Article in the

absence of justification; and, if it concludes by majority vote that the proposed action would so violate it shall find such justification only by a vote of two-thirds of the membership of the Council.

Sec. 18. The President shall be authorized to delegate to such person or persons as he may designate any of his powers or functions under this Article except the authority granted by Sections 12, 14, and 16.

Sec. 19. Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between all of the affiliates involved in or affected by the dispute, the provisions of such agreement shall be complied with prior to the invocation of the procedures provided in this Article. If such agreement provides for final and binding arbitration, and an affiliate party to such agreement claims that another such affiliate has not complied with a decision under that agreement, it may file a complaint under the provisions of Section 14 of this Article and the procedures provided in this Article in the case of non-compliance shall be applicable. Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between affiliates but involves or affects an affiliate not a party to such an agreement, the affiliate not a party to such agreement may invoke the procedures provided in this Article for the settlement and determination of such dispute.

Sec. 20. The provisions of this Article with re-

ARTICLE XX—Settlement of Internal Disputes

spect to the settlement and determination of disputes of the nature described in this Article shall constitute the sole and exclusive method for settlement and determination of such dispute and the provisions of this Article with respect to the enforcement of such settlements and determinations shall constitute the sole and exclusive method for such enforcement. No affiliate shall resort to court or other legal proceedings to settle or determine any disputes of the nature described in this Article or to enforce any settlement or determination reached hereunder.

Sec. 21. The provisions of this Article shall take effect on January 1, 1962. Upon such effective date, the provisions of Article III, Section 4, of this Constitution, except the first sentence thereof, shall be of no further force and effect. However any dispute which has become subject to a formal complaint under such provision prior to January 1, 1962, shall be disposed of under the procedures and principles theretofore applicable and not under the procedures or principles set forth in this Article, except that any recommendation of the Impartial Umpire issued subsequent to January 1, 1962, shall be subject to the provisions of Sections 14 through 16 of this Article.

Sec. 22. Notwithstanding any other provision of this Constitution this Article shall be subject to amendment by the convention by a majority vote of those present and voting either by a show of hands, or, if a roll call is properly demanded as provided in this Constitution, by such roll call.

Exhibit 21
Annexed to Supplemental Affidavit
of
James J. Boyle

INTERNATIONAL BROTHERHOOD OF
PAINTERS and ALLIED TRADES

UNITED UNIONS BUILDING. 1750 NEW YORK AVE., N.W., WASHINGTON, D.C. 20006

OFFICE OF S. FRANK RAFTERY, GENERAL PRESIDENT • (202) 872-1444

GLAZIERS AND
GLASS WORKERS
SIGN PAINTERS AND
SCENIC ARTISTS
CARPET AND LINOLEUM
PAINT MAKERS
and Allied Industrial Workers

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August 16, 1973

Mr. William J. Cour, Chairman
Impartial Jurisdictional Disputes
Board
815 - 16th Street, N.W.
Washington, D.C. 20006

Re: MICH 8/7/73

Dear Mr. Cour:

With further reference to our request for a job decision in the matter of a jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint, Woodhaven Elementary School project, Woodhaven, Michigan, Westside Construction Company, Contractor, Car Mar Construction Inc., Subcontractor, kindly accept this letter as a supplement to our original request.

The work in dispute is the pointing and taping of drywall seams, nail and/or screw holes with an adhesive compound on the above-referenced project. After necessary sanding, the drywall surface is then painted in the conventional manner.

It is our contention that the responsible contractor, Car Mar Construction Inc., is in violation of the CONTRACTOR'S RESPONSIBILITY, as outlined in Section 2(a) on page 3 of the Procedural Rules and Regulations of the Impartial Jurisdictional Disputes Board, for making such a gross misassignment of the work to the members of the OP&CMIA. This charge is substantiated by the fact that such work is recognized to be within the jurisdiction of our Brotherhood as provided for in the "decision of record" entitled "Pointing, Taping and Filling of Joints on Wall Board" dated May 19, 1947, appearing on pages 144 and 145 of the current edition of the "Green Book." The decision reads in part as follows:

> "When adhesive materials are used it shall be the work of members of the Brotherhood of Painters, Decorators and Paperhangers of America."

Exh 21

We also wish to call the Board's attention to Section F. 1 appearing on page 4 of the attached copy of the Memorandum of Understanding between the OP&CMIA, the BMPIU and our Brotherhood dated November 2[illegible], 1961, which reads in part as follows:

> "All pointing and taping of drywall, regardless of material used, is Painters' work, providing the drywall surfaces are not to receive plaster, acoustical or imitation acoustical finishes."

At the hearing our representative will present photographs of the work in dispute which will clearly illustrate that the pointing and taping of the drywall surfaces is the traditional preparatory work which is vitally necessary to a satisfactory painting performance.

We respectfully request that the Board find the work to be the trade practice of the Painter in conformity with the "decision of record" dated May 19, 1947 and the Memorandum of Understanding dated November 29, 1961 between the disputing parties.

Very truly yours,

S. Frank Raftery

S. FRANK RAFTERY
General President

Attachment

Exhibit 22
Annexed to Supplemental Affidavit
of
James J. Boyle

INTERNATIONAL BROTHERHOOD OF
PAINTERS and ALLIED TRADES

UNITED UNIONS BUILDING, 1750 NEW YORK AVE., N.W., WASHINGTON, D.C. 20006

OFFICE OF S. FRANK RAFTERY, GENERAL PRESIDENT • (202) 872-1444

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GLAZIERS AND
GLASS WORKERS
SIGN PAINTERS AND
SCENIC ARTISTS
CARPET AND LINOLEUM
PAINT MAKERS
and Allied Industrial Workers

September 13, 1973

Mr. William J. Cour, Chairman
Impartial Jurisdictional Disputes
Board
815 - 16th Street, N.W.
Washington, D.C. 20006

Re: WISC 8/21/73
WISC 8/29/73

Dear Mr. Cour:

This is in continuance of our requests for job decisions in the matter of the jurisdictional disputes between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint at (1) Wauwatosa East High School, Milwaukee, Wisconsin, John Gregory & Son Inc., Contractor, and (2) M.E.C.C.A. Convention Center, Milwaukee, Wisconsin, Hunzinger Construction, Contractor, Brookfield Plastering Corporation, Subcontractor.

The work in dispute on these projects is the pointing and taping of drywall seams, nail and/or screw holes with an adhesive compound. After proper drying time and necessary sanding, the drywall surface is then painted in the conventional manner.

It is our contention that the responsible contractors, John Gregory & Son Inc. and Brookfield Plastering Corporation, are in violation of the CONTRACTOR'S RESPONSIBILITY, as outlined in Section 2(a) on page 3 of the Procedural Rules and Regulations of the Impartial Jurisdictional Disputes Board, for making such a gross misassignment of the work to the members of the OP&CMIA. This charge is substantiated by the fact that such work is recognized to be within the jurisdiction of our Brotherhood as provided for in the "decision of record" entitled "Pointing, Taping and Filling of Joints on Wall Board" dated May 19, 1947, appearing on pages 144 and 145 of the current edition of the "Green Book." The decision reads in part as follows:

Exh 22

"When adhesive materials are used it shall be the work of members of the Brotherhood of Painters, Decorators and Paperhangers of America."

We also wish to call the Board's attention to Section F. 1 appearing on page 4 of the Memorandum of Understanding between the OP&CMIA, the BMPIU and our Brotherhood dated November 29, 1961, which reads in part as follows:

"All pointing and taping of drywall, regardless of material used, is Painters' work, providing the drywall surfaces are not to receive plaster, acoustical or imitation acoustical finishes."

At the hearing our representative will present photographs of the work in dispute which will clearly illustrate that the pointing and taping of the drywall surfaces is the traditional preparatory work which is vitally necessary to a satisfactory painting performance.

On August 23, 1973 the Impartial Jurisdictional Disputes Board considered an identical jurisdictional dispute between the same disputing parties over pointing and taping of drywall to receive paint, Woodhaven Elementary School project, Woodhaven, Michigan, West Side Construction Company, Contractor, Car-Mar Construction Inc., Subcontractor. At that time the Board voted to make the following job decision:

"The work in dispute is governed by agreement of November 29, 1961 and shall be assigned to painters."

We respectfully request that the Board find the work to be the trade practice of the Painter in conformity with the "decision of record" dated May 19, 1947, the Memorandum of Understanding dated November 29, 1961, and the decision of the Impartial Jurisdictional Disputes Board rendered on August 23, 1973, copies of which are attached.

Very truly yours,

S. Frank Raftery

S. FRANK RAFTERY
General President

Attachments

line to dwelling is work that should be done by or under the supervision of, members of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada.

WM. L. HUTCHESON (Signed)
National Referee,
Building and Construction Trades Department

(NOTE—This in no way deletes or expunges from the records of this Department the letter of March 9, 1946, addressed to the Morris County, New Jersey, Building and Construction Trades Council or the advice contained in Vice President Hutcheson's telegram of March 27, 1946.)

Pointing, Taping and Filling of Joints on Wall Board

May 19, 1947.

Mr. Richard J. Gray, President
Building and Construction Trades Department
501 A. F. of L. Building,
Washington 1, D. C.

Dear Sir and Brother:

In the matter of the jurisdictional controversy over the pointing, taping and filling of joints on wallboard in preparing it to receive paint and other wall coverings, involving the Brotherhood of Painters, Decorators and Paperhangers of America; Bricklayers, Masons and Plasterers International Union of America and the Operative Plasterers and Cement Finishers International Association of the United States and Canada, a hearing was held in the Executive Council room, American Federation of Labor building, May 6, 1947.

Representing the organizations involved were: Harry C. Bates, President of the B. M. and P. I. U. of A.; John E. Rooney, President of the

O. P. and C. F. I. A.; L. P. Lindelof, General President, B. of P. D. and P. of A.; Joseph P. Hillock, Painters, Washington, D. C.; J. C. Moennick, Secretary-Treasurer, Painters District Council, Chicago, Ill.; Milton R. Stephens, Plasterers, Washington, D. C., and Walter Redmond, International Secretary of the O. P. and C. F. I. A.

After giving the statements made, and evidence submitted, careful consideration I have reached a conclusion and render the following decision; to wit:

When plaster material is used to do pointing and filling it shall be the work of members of the Operative Plasterers and Cement Finishers International Association of the United States and Canada—and/or—members of the Bricklayers, Masons and Plasterers International Union of America.

When adhesive materials are used it shall be the work of members of the Brotherhood of Painters, Decorators and Paperhangers of America.

Respectfully submitted,
WM. L. HUTCHESON (Signed)
Referee,
Building and Construction Trades Department.

Sitting with Referee at hearing were: Vice Presidents Wm. J. McSorley and Robert Byron of the Building and Construction Trades Department.

291a

BEST COPY AVAILABLE

Exhibit 23
Annexed to Supplemental Affidavit
of
James J. Boyle

INTERNATIONAL BROTHERHOOD OF
PAINTERS and ALLIED TRADES

UNITED UNIONS BUILDING. 1750 NEW YORK AVE., N.W., WASHINGTON, D.C. 20006

OFFICE OF S. FRANK RAFTERY, GENERAL PRESIDENT • (202) 872-1444

293a

GLAZIERS AND
GLASS WORKERS
SIGN PAINTERS AND
SCENIC ARTISTS
CARPET AND LINOLEUM
PAINT MAKERS
and Allied Industrial Workers

September 20, 1973

Mr. William J. Cour, Chairman
Impartial Jurisdictional Disputes
Board
815 - 16th Street, N.W.
Washington, D.C. 20006

Re: COLO 9/6/73
COLO 9/6/73
COLO 9/6/73

Dear Mr. Cour:

This is in continuance of our requests for job decisions in the matter of the jurisdictional disputes between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint at ~~(1) Fine Arts Building, Cherry Creek Schools, Littleton, Colorado, N. G. Petry Company, Contractor, Richard O'Brien Plastering Company, Subcontractor~~, (2) Rodeway Convention Center project, Denver, Colorado, Colorado Properties, Contractor, Richard O'Brien Plastering Company, Subcontractor, and (3) Mission Viejo Elementary School project, Aurora, Colorado, N. G. Petry Company, Contractor, Richard O'Brien Plastering Company, Subcontractor.

The work in dispute on these projects is the pointing and taping of drywall seams, nail and/or screw holes with an adhesive compound. After proper drying time and necessary sanding, the drywall surface is then painted in the conventional manner.

It is our contention that the responsible contractor, Richard O'Brien Plastering Company, is in violation of the CONTRACTOR'S RESPONSIBILITY, as outlined in Section 2(a) on page 3 of the Procedural Rules and Regulations of the Impartial Jurisdictional Disputes Board, for making such a gross misassignment of the work to the members of the OP&CMIA. This charge is substantiated by the fact that such work is recognized to be within the jurisdiction of our Brotherhood as provided for in the "decision of record" entitled "Pointing, Taping and Filling of Joints

Exh 23

on Wall Board" dated May 19, 1947, appearing on pages 144 and 145 of the current edition of the "Green Book." The decision reads in part as follows:

> "When adhesive materials are used it shall be the work of members of the Brotherhood of Painters, Decorators and Paperhangers of America."

We also wish to call the Board's attention to Section F. 1 appearing on page 4 of the Memorandum of Understanding between the OP&CMIA, the BMPIU and our Brotherhood dated November 29, 1961, which reads in part as follows:

> "All pointing and taping of drywall, regardless of material used, is Painters' work, providing the drywall surfaces are not to receive plaster, acoustical or imitation acoustical finishes."

On August 23, 1973 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the IBPAT and the OP&CMIA over pointing and taping of drywall to receive paint, Woodhaven Elementary School project, Woodhaven, Michigan, West Side Construction Company, Contractor, Car-Mar Construction Inc., Subcontractor. At that time the Board voted to make the following job decision:

> "The work in dispute is governed by agreement of November 29, 1961 and shall be assigned to painters."

On September 13, 1973 the Board considered two other identical jurisdictional disputes between the same disputing parties at (1) M.E.C.C.A. Convention Center project, Milwaukee, Wisconsin, Hunzinger Construction, Contractor, Brookfield Plastering Corporation, Subcontractor, and (2) Wauwatosa East High School project, Milwaukee, Wisconsin, John E. Gregory & Son Inc., Contractor. At that time the Board voted to make the following job decision:

> "Pointing and taping of drywall to receive paint is governed by the agreement of November 29, 1961 and shall be assigned to painters...."

We respectfully request that the Board find the work to be the trade practice of the Painter in conformity with the "decision of record" dated May 19, 1947, the Memorandum of Understanding dated November 29, 1961, and the decisions of the Impartial

Jurisdictional Disputes Board rendered on August 23 and September 13, 1973, copies of which are attached.

Very truly yours,

S. FRANK RAFTERY
General President

Attachments

Exhibit 24
Annexed to Supplemental Affidavit
of
James J. Boyle

INTERNATIONAL BROTHERHOOD OF

PAINTERS and ALLIED TRADES

UNITED UNIONS BUILDING. 1750 NEW YORK AVE., N.W., WASHINGTON, D.C. 20006

OFFICE OF S. FRANK RAFTERY, GENERAL PRESIDENT • (202) 872-1444

0297a

GLAZIERS AND
GLASS WORKERS
SIGN PAINTERS AND
SCENIC ARTISTS
CARPET AND LINOLEUM
PAINT MAKERS
and Allied Industrial Workers

October 4, 1973

Mr. William J. Cour, Chairman
Impartial Jurisdictional Disputes
Board
815 - 16th Street, N.W.
Washington, D.C. 20006

Re: COLO 9/6/73

Dear Mr. Cour:

This is in continuance of our request for a job decision in the matter of the jurisdictional dispute between the International Brotherhood of Painters and Allied Trades and the Operative Plasterers and Cement Masons International Association over pointing and taping of drywall to receive paint, Fine Arts Building, Cherry Creek Schools, Littleton, Colorado, N. G. Petry Company, Contractor, Richard O'Brien Plastering Company, Subcontractor.

The work in dispute on this project is the pointing and taping of drywall seams, nail and/or screw holes with an adhesive compound. After proper drying time and necessary sanding, the drywall surface is then painted in the conventional manner.

I

It is our contention that such work is recognized to be within the jurisdiction of the Painter as outlined in the "decision of record" entitled "Pointing, Taping and Filling of Joints on Wall Board" dated May 19, 1947, appearing on pages 144 and 145 of the current edition of the "Green Book." The decision reads in part as follows:

> "When adhesive materials are used it shall be the work of members of the Brotherhood of Painters, Decorators and Paperhangers of America."

II

We also wish to call the Board's attention to Section F. 1 appearing on page 4 of the Memorandum of Understanding between the OP&CMIA, the BMPIU and our Brotherhood dated November 29, 1961, which reads in part as follows:

Exh 24

"All pointing and taping of drywall, regardless of material used, is Painters' work, providing the drywall surfaces are not to receive plaster, acoustical or imitation acoustical fir hes."

On August 23, 1973, September 13, 1973, and September 20, 1973, the Impartial Jurisdictional Disputes Board considered identical disputes between the same disputing parties at (1) Woodhaven Elementary School project, Woodhaven, Michigan, (2) Wauwatosa East High School project, Milwaukee, Wisconsin, (3) M.E.C.C.A. Convention Center project, Milwaukee, Wisconsin, (4) Rodeway Convention Center project, Denver, Colorado, and (5) Mission Viejo Elementary School project, Aurora, Colorado. In each instance the Board voted to make the following job decision:

"Pointing and taping of drywall to receive paint is governed by the agreement of November 29, 1961 and shall be assigned to painters...."

We respectfully request that the Board find the work to be within the jurisdiction of the Painter consistent with past decisions rendered by the Impartial Jurisdictional Disputes Board, copies of which are attached.

Very truly yours,

S. Frank Raftery

S. FRANK RAFTERY
General President

Attachments

Opinion of
Metzner, D. J. dated November 5, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG, PASQUALE DE ROSA, ALBERT ZAPPY, HARRY EDWARDS and ANTHONY DEL GAIS, each of them individually and on behalf of all persons, members of Local 1974 working or seeking work as drywall tapers within the jurisdiction of such labor organization, similarly situated,

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, and OPERATIVE PLASTERERS LOCAL 60, et al.,

Defendants.

75 Civ. 4289 (CMM)

- x

METZNER, D. J.:

Plaintiffs Drywall Tapers and Pointers of Greater New York, Local 1974 (Local 1974), and four members of the local, individually and as purported class representatives, move for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure. Local 1974 is a unit of the International

Brotherhood of Painters and Allied Trades (Painters).

Defendants Operative Plasterers' and Cement Masons' International Association (Plasterers), and its Locals 60, 202 and 852, cross-move to dismiss the complaint for failure of plaintiffs to exhaust their inter-union administrative procedures.

Both Plasterers and Painters are member unions of the Building and Construction Trades Department of the AFL-CIO (the Department), and, as such, are bound by its arbitral and administrative machinery.

This action involves a jurisdictional dispute arising out of job assignments in the prefinishing treatment (taping and pointing) of drywall joints in the construction of buildings using wallboard materials.

On July 31, 1974, the collective bargaining agreement between Local 1974 and the Metropolitan New York Drywall Contractors Association, Inc. (Metropolitan) expired. On August 1, 1974, a work stoppage commenced, discontinuing taping and pointing for all employers who were members of Metropolitan. Between that date and October 7, 1974, when the work stoppage ended, it is alleged that locals of Plasterers, on five separate

occasions, went onto the job sites involved and did work which was within the jurisdiction of Painters and Local 1974.

On March 18, 1975, Local 1974 was at work on a project called Metro North, but stopped work because the employer was delinquent in payments to the Local's welfare trust funds, pursuant to the existing contract. On or about March 20, 1975, it is alleged that the employer subcontracted the drywall taping and pointing to an employer not under contract to Local 1974. The subcontractor employed a taping and pointing material called "Sta-Smooth," and gave the work to Local 60 of the Plasterers. Plasterers claim that "Sta-Smooth" is a plaster material, that application of plaster materials is Plasterers' work, and that therefore, there was no usurpation of Painters' work. The complaint further enumerates four other instances of alleged performance of Painters' work by Plasterers.

The question here centers around the applicability of two conflicting jurisdictional definitions. On May 19, 1947, a decision of record was issued by the Department which stated in pertinent part:

"When plaster material is used to do pointing and filling it shall be the work of the [Plasterers] . . . .

When adhesive materials are used it shall be the work of [the Painters]."

It is the contention of the Plasterers that this rule is still applicable, and that since "Sta-Smooth" was determined by a local arbitration board, after an adversary hearing, to be a plaster material, its application is Plasterers' work.

Painters, however, point to a Memorandum of Understanding (Memorandum) of November 29, 1961, signed by both international unions and binding on their locals, which states in pertinent part:

"POINTING, TAPING AND TEXTURING ON DRYWALL SURFACES.

. All pointing and taping of drywall, <u>regardless of material used</u>, is Painters' work, providing the drywall surfaces are not to receive plaster, acoustical or imitation acoustical finishes. . . .

2. The application of plaster, acoustical or imitation acoustical finishes shall be the work of the Plasterers, <u>as well as the preparatory pointing and taping of drywall surfaces that are to receive these finishes</u>." (Emphasis added.)

The Memorandum further states:

> "This Memorandum of Understanding is to supersede any and all agreements or understandings, either written or oral, which have been in use over the years, which pertain to the items of work outlined in this Memorandum of Understanding."

Painters, without conceding that "Sta-Smooth" is a plaster material, argue that since the 1961 Memorandum is still binding, the type of material used is inconsequential, as the drywall work here in question is preliminary to painting. The Plasterers claim that the Memorandum is no longer in effect, having either been abrogated or never really honored. The court is therefore confronted initially with the question of the applicability of the 1961 Memorandum. This is a question far better suited to determination by the Department than by this court. Local 1974 contends, however, that it has attempted to use the machinery of the Department, but has been unable to obtain a resolution.

At this point, it is helpful to outline the administrative procedures of the Department, as established under the Plan for the Settlement of Jurisdictional

Disputes in the Construction Industry (the Plan). Under the Plan, as it is applicable to this situation, a jurisdictional dispute over a given work assignment goes first to a local board, in this case, the Executive Committee of the Building Trades Employers' Association of the City of New York (BTEA). After a decision is rendered by the BTEA, it may be appealed to the Impartial Jurisdictional Disputes Board (Disputes Board) of the Department. A decision of the Disputes Board may then be appealed to the Appeals Board of the Department whose decision is final.

The Disputes and Appeals Boards are administered by the Joint Administrative Committee, which oversees the operation of the Boards. It also reviews the records of disputes decided, and may determine that a given type of dispute is repetitive in nature. If it so determines, it authorizes the Chairman of the Disputes Board to issue immediate decisions without hearing, and refers the matter to the presidents of the international unions involved, for a period not to exceed ninety days, to endeavor to reach a national agreement. Should the international unions fail to reach an agreement within

the time period, then the Joint Administrative Committee "shall refer the dispute to the Hearings Panel [a board with national-level decision-making power] for a national decision which shall be binding on all unions."

It is clear from this highly-developed and sophisticated arbitration structure that no jurisdictional dispute between members of the Department should ever reach the courts. However, a breakdown in procedure has caused the lawsuit in the instant case.

I will not here review in detail the arbitral circummigrations of Local 1974. Suffice it to say, with respect to their attempts, that they and the Plasterers were before the BTEA (involving the Metro North project), which held that "Sta-Smooth"is a plaster material, and that the work was Plasterers' work, with no mention of the 1961 agreement. The appeal of this finding to the Disputes Board was allowed and then revoked because Local 1974 had initiated an arbitration against an employer. The arbitration involved the allocation of work under the collective bargaining agreement. The Chairman of the Disputes Board found this to be in violation of the Department's constitution

in that it sought to adjudicate a jurisdictional dispute outside the Department's machinery. Local 1974 and Painters disagree with the ruling of the Chairman and claim that the arbitration is of properly arbitrable contractual issues. There this matter rests.

From August 24, 1973 to November 2, 1973, at least ten individual decisions of the Disputes Board were rendered in reliance on the 1961 Memorandum. On December 11, 1973, the Joint Administrative Committee found the question repetitive and referred that matter to the international presidents of the Painters and the Plasterers for agreement, but, inexplicably, did not authorize the Chairman of the Disputes Board to issue immediate decisions. Instead, the Committee instructed the Disputes Board to defer action on any request for a job decision in cases involving this type of jurisdictional dispute.

This action was protested by Painters, and by letter of January 15, 1974, the Joint Administrative Committee assured Painters that the matter would be considered at its next meeting. Since that date there has been no word from the Committee. The

Disputes Board has continued to defer all questions surrounding taping and pointing jurisdiction. The Joint Administrative Committee, at the end of ninety days, did not refer the question to the Hearings Panel for a national decision.

Accordingly, the administrative machinery which exists to resolve such questions has failed to function according to its own stated Plan.

It is clear that the issue of the present applicability of the 1961 Memorandum would be best decided by the Hearings Panel under the existing machinery of the Plan. Accordingly, the court orders both Local 1974 through its international and Plasterers to petition the Joint Administrative Committee for immediate referral to the Hearing's Panel.

The motion and cross-motion are denied without prejudice to a renewal of them on a showing that the Plasterers are not cooperating or that the Building and Construction Trades Department refuses to follow its own published Plan.

So ordered.

Dated: New York, N. Y.
November 5, 1975

Charles H. Metzner
U. S. D. J.

ASSIGNED TO JUDGE METZNER

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, -and- CHARLES LONG, PASQUALE DE ROSA, ALBERT ZAPPY, HARRY EDWARDS and ANTHONY DEL GAIS, each of them individually and on behalf of all other persons, members of Local 1974 working or seeking work as drywall tapers within the jurisdiction of such labor organization, similarly situated, Plaintiffs, -against- OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, OPERATIVE PLASTERERS LOCAL 60, OPERATIVE PLASTERERS LOCAL 202, and OPERATIVE PLASTERERS LOCAL 852, Defendants.	CIVIL ACTION FILE NO. 75 CIV. 4289 (CMM) STIPULATION EXTENDING TIME TO ANSWER

IT IS HEREBY STIPULATED AND AGREED by the parties hereto that an Order may be entered herein extending the time of Defendants, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, OPERATIVE PLASTERERS LOCAL 60, OPERATIVE PLASTERERS LOCAL 202 and OPERATIVE PLASTERERS LOCAL 852, to answer, amend or supplement the answer as of course or to make any motion with relation to the Summons or to the Complaint in the

above entitled action, up to and including the 30th day of January, 1976.

Dated: November 14, 1975
New York, New York

Roger M. Levin

LEVIN & WEISSMAN
BY ROGER M. LEVIN, ESQ.
Attorneys for Defendants
Office and Post Office Address
122 East 42nd Street
New York, New York 10017
(212) 867-7070

Burton H. Hall

BURTON H. HALL, ESQ.
Attorney for Plaintiffs,
Office and Post Office Address
401 Broadway
New York, New York 10013
(212) 431-9114

SO ORDERED:

UNITED STATES DISTRICT JUDGE

Plaintiffs Notice of Motion for
Preliminary Injunction Filed January 26, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG, et al., etc.,

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al.,

Defendants.

---

75 Civ. 4289 (C.M.M.)

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE THAT, upon the affidavits of JOHN ALFARONE and JAMES SHAY, sworn to the 26th and 23rd days, respectively, of January 1976, and upon the following papers already filed in this Court, to wit:

(i) the Verified Complaint herein, verified the 28th of August, 1975;

(ii) the affidavit of John Alfarone, sworn to the 28th of August 1975;

(iii) the affidavit of James J. Shay, sworn to the 22nd day of September 1975; and

(iv) the Memorandum previously submitted in support of Plaintiffs' motion for a preliminary injunction,

and upon all the papers and proceedings herein, plaintiffs will move this Court, pursuant to Rule 65, Federal Rules of Civil Procedure, on February 9, 1976, at Room 2201, United States Court House, Foley Squre, New York, New York, at 10:00 A.M. or as soon thereafter as counsel can be heard for a preliminary injunction ordering and directing defendants, their employees, agents, servants and attorneys and other persons in active concert or parti-

cipation with any of them, to recognize and abide by the provisions of a certain Memorandum of Understanding entered into between defendant International Association and two other international labor organizations on November 29, 1961, and in accordance therewith to cease and refrain and desist from asserting either jurisdiction or bargaining rights over work involving taping or pointing of drywall surfaces not to receive plaster, acoustical or imitation acoustical finishes, and to withdraw from all workplaces at which such work is in process any persons sent or referred to such workplaces by defendants or by any of them to perform such work, pending final hearing and determination in this action; and, in the alternative, if such relief be denied, directing an early trial in the within action; and for such other, further and different relief as may be appropriate.

PLEASE TAKE FURTHER NOTICE that any answering or opposing papers to be submitted on the return date of this motion or before such date must be served upon the undersigned no later than three days before the return date stated above.

Yours, etc.,

BURTON H. HALL
Attorney for Plaintiffs

401 Broadway
New York, N.Y., 10013

(212) 431-9114

Affidavit of John Alfarone in Support of
Motion for Preliminary Injuction

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG, et al., etc.,

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al.,

Defendants.

75 Civ. 4289 (C.M.M.)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JOHN ALFARONE, being duly sworn, deposes and says:

1. I am President and Business Manager of plaintiff DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, a local labor organization, and am fully familiar with the facts and proceedings recounted herein; and I make this affidavit in support of plaintiffs' application, renewed by this motion, for a preliminary injunction.

2. This motion is a renewal of plaintiffs' previous motion for a preliminary injunction, asking that defendant labor organizations be directed to comply with the agreement, or Memorandum of Understanding, entered into on November 29, 1961 between defendant international labor organization and two others, one of them the parent body of plaintiff Local 1974 (the International Brotherhood of Painters and Allied Trades). Briefly, that Memorandum of Understanding established that all pointing and taping of drywall surfaces, regardless of material used, falls within the jurisdiction of plaintiff Local 1974's parent international, unless

such surfaces are to receive plaster, acoustical or imitation acoustical finishes. As pointed out in the papers submitted in support of the earlier motion (including the Verified Complaint), defendant labor organizations have violated, and continue to violate that agreement.

3. In its decision of November 5, 1975, entered November 6, this Court ordered both Local 1974, through its international, and defendant Operative Plasterers' International Association to petition the Joint Administrative Committee, of the AFL-CIO Building and Construction Trades Department, for immediate referral to the Hearings Panel established by the latter's plan for settlement of disputes of the issue of the present applicability of the 1961 Memorandum of Understanding. This Court further provided that plaintiffs' motion for a preliminary injunction may be renewed on a showing that the Plasterers were not cooperating or that the Building and Construction Trades Department refuses to follow its own published plan.

4. As the annexed affidavit of JAMES SHAY establishes, it now appears that both these eventualities have come to pass. It appears that the Operative Plasterers International Association has not complied with this Court's Order directing it to petition the Joint Administrative Committee for immediate referral of the issue to the Hearings Panel. And it also appears that the Joint Administrative Committee refuses to follow its published plan by affirmatively responding to the petition of Local 1974, through its international, for such immediate referral.

5. I am advised and verily believe that the Joint Administrative Committee held a meeting on or about December 18, 1975, after its receipt of the letter from the General President of International Brotherhood of Painters and Allied Trades of December 11, 1975, which is described in the annexed affidavit of James Shay and annexed thereto as Exhibit "B."

6. As pointed out in the earlier affidavit of JAMES

J. SHAY, sworn to September 22, 1975 (and submitted as a Reply Affidavit on the earlier motion), it has been the practice of the Joint Administrative Committee, in refusing a request made by the International Brotherhood of Painters, to simply fail to answer such request. Thus, in paragraphs 8 and 9 of Mr. SHAY's affidavit, it is recounted that the General President of the International Brotherhood of Painters made a request by letter dated January 8, 1974 to reconsider the Committee's previous "defer action" decision, and though the letter was acknowledged a week later and consideration promised at the Committee's next meeting, no further response was ever forthcoming. Similarly, the International Brotherhood of Painters made a later request to the Joint Administrative Committee by letter of September 4, 1975, recounted in paragraph 27 of Mr. SHAY's affidavit and annexed thereto as Exhibit "Y," yet I am advised and verily believe that this second letter, also, has never been answered, though its receipt has been acknowledged.

7. It appears, therefore, that the failure of the Joint Administrative Committee to answer the request made by the International Brotherhood of Painters, at the behest of Local 1974, for immediate referral of the issue of the present applicability of the 1961 Memorandum of Understanding to the Hearings Panel -- even though such request was made nearly two months prior to the return date of this motion -- indicates refusal by the Joint Administrative Committee, and thus by the Building and Construction Trades Department, to follow its own published plan, which latter calls for submission of repetitive issues to the Hearings Panel.

8. In contrast to the apparent failure of defendant Plasterers to comply with this Court's Order, plaintiff Local 1974 has diligently and in good faith proceeded to comply and has complied as quickly as was possible.

9. The circumstances justifying and requiring the issuance of preliminary injunctive still prevail and continue to exist.

10. As noted in the course of the previous proceedings in this Court (cf.: transcript of hearing of October 3, 1975, page 6), substantially after this suit was brought, the International Brotherhood of Painters filed charges, pursuant to Article XX of the AFL=CIO Constitution, alleging that the Operative Plasterers' International Association had interfered with the established bargaining relationships existing beteen Local 1974 and the drywall employers. For the convenience of the Court, a copy of the Impartial Umpire's decision on those charges, dated January 9, 1976, is submitted herewith, as Exhibit "C" annexed to the (annexed) affidavit of JAMES SHAY. The Impartial Umpire's decision upholds the Painters' charges. However, as noted by Local 1974's counsel on oral argument, the relief which such a decision provides, and can provide, is inadequate -- for the defendant Plasterers, in cooperation and/or collusion with employers, can continue to circumvent that decision by acting through the intermediary of a sub=contractor who does not fall within an established collective bargaining relationship with Local 1974. Indeed, that is precisely the situation which prevails and has since last March prevailed at the Metro North jobsite (see: Paragraph 20 of the Verified Complaint). The Impartial Umpire's decision is not a jurisdictional determination, as it makes clear and as the AFL-CIO Constitution itself makes clear, for the Umpire has no authority under Article XX to make a jurisdictional determination. And until an enforceable jurisdictional determination is made, the wrongs complained of will continue and plaintiffs, Local 1974 and its members, will continue to suffer grievous and irreparable damage and injury.

11. Unless otherwise ordered by this Court, defendants will continue to violate the 1961 Memorandum of Understanding and will continue to commit the acts described and set forth in the Verified Complaint and in your deponent's affidavit of August 28, 1975, and plaintiffs will continue to suffer grievous and irreparable material injury and damage for which there is no adequate remedy

at law.

12. No previous application, save the motion made in this Court and described hereinabove, has been made for the relief requested herein.

WHEREFORE, your deponent prays that plaintiffs' motion for preliminary injunction be granted.

s/ JOHN Alfarone
JOHN ALFARONE

Sworn to before me this
26th day of January, 1976
s/ Berta Hall
(notarial stamp)

Affidavit of James J. Shay in
Support of Motion for Preliminary Injuction

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG, et al., etc.,

Plaintiffs,

-against-

OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION, Etc., et al.,

Defendants.

75 Civ. 4289 (C.M.M.)

DISTRICT OF COLUMBIA: ss.:

JAMES SHAY, being duly sworn, deposes and says:

1. I am and at all times herein mentioned have been Director of Jurisdiction of the International Brotherhood of Painters and Allied Trades, AFL-CIO (the parent body of plaintiff Local 1974, hereinafter referred to as the International), and am fully familiar with the facts and proceedings described herein.

2. On November 12 and 13, 1975, John Alfarone, President of Local 1974, requested, both by telegram (copy annexed hereto as Exhibit "A") and in person, that the International petition the Joint Administrative Committee for immediate referral of the issue of the present applicability of the November 29, 1961 Memorandum of Understanding to a Hearings Panel.

3. On December 11, 1975, a letter was sent from S. Frank Raftery, General President of the International, at his direction,

to the Chairman and Vice Chairman of the Joint Administrative Committee, petitioning the Joint Administrative Committee for immediate referral to a Hearings Panel of the issue of the present applicability of the 1961 Memorandum of Understanding. A copy of that letter is annexed hereto as Exhibit "B."

4. I am informed that the letter has in fact been received by the Joint Administrative Committee. The International has received no response to that letter.

5. Annexed hereto as Exhibit "C" is a copy of an arbitration decision handed down by Impartial Umpire David Cole on January 9, 1976, in connection with a dispute related to that presented by this case and arising out of some of the same facts.

6. So far as I am aware, the Operative Plasterers and Cement Masons International Association has not made any request to the Joint Administrative Committee as directed by this Court's decision, and has not otherwise cooperated with the petition made by the International on behalf of plaintiff Local 1974.

James Shay
JAMES SHAY

Washington)
D.C.) s.s.

Subscribed and Sworn to
before me this 23rd
day of January 1976

Ann M. Corbin
NOTARY PUBLIC

My Commission Expires June 14, 1979

NOTARY PUBLIC

Exhibit A
Annexed to Affidavit of
James J. Shay

MGMNYBT HSB
2-012764E316002 11/12/75
ICS IPMMTZZ CSP
1 2122428500 MGM TDMT NEW YORK NY 11-12 1123A EST

western union Mailgram

UNITED STATES POSTAL SERVICE

THIS MAILGRAM WAS TRANSMITTED ELECTRONICALLY BY WESTERN UNION TO A POST OFFICE NEAR YOU FOR DELIVERY

LOCAL UNION 1974 D LAGATTA
37 UNION SQUARE WEST
NEW YORK NY 10003

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2122428500 TDMT NEW YORK NY 84 11-12 1123A EST
PMS GENERAL PRESIDENT S F RAFTERY, TWX 710-822-9556
UNITED UNIONS BLDG 1750 NEW YORK AVE NORTHEST
WASHINGTON DC 20006
DEAR SIR AND BROTHER PURSUANT TO THE DECISION AND ORDER OF UNITED STATES DISTRICT JUDGE CHARLES E METZNER, COPIES OF WHICH HAVE BEEN FORWARDED TO JAMES SHAY AND DAVE BARR I REQUEST THAT THE INTERNATIONAL PETITION BE JOINT ADMINISTRATIVE COMMITTEE FOR IMMEDIATE REFERRAL TO THE HEARING PANEL OF THE ISSUE OF THE PRESENT APPLICABILITY OF THE NOVEMBER 29 1961 MEMORANDUM OF UNDERSTANDING I WILL BE IN WASHINGTON TOMORROW TO MEET WITH YOU AND WITH VICE PRESIDENT WOLFORD IF YOU WISH FRATERNALLY YOURS
JOHN ALFARONE BUSINESS MANAGER

11:23 EST

MGMNYBT HSB

Exhibit B
Annexed to Affidavit of
James J. Shay

BEST COPY AVAILABLE

INTERNATIONAL BROTHERHOOD OF

PAINTERS and ALLIED TRADES

UNITED UNIONS BUILDING. 1750 NEW YORK AVE., N.W., WASHINGTON, D.C. 20006

OFFICE OF S. FRANK RAFTERY, GENERAL PRESIDENT • (202) 872-1444

GLAZIERS AND
GLASS WORKERS
SIGN PAINTERS AND
SCENIC ARTISTS
CARPET AND LINOLEUM
PAINT MAKERS
and Allied Industrial Workers

December 11, 1975

COPY

Mr. Robert A. Georgine
Chairman
Joint Administrative Committee
Plan for the Settlement of
Jurisdictional Disputes
in the Construction Industry
815 Sixteenth Street, N. W.
Washington, D. C. 20006

Mr. Harry P. Taylor
Vice Chairman
Joint Administrative Committee
Plan for the Settlement of
Jurisdictional Disputes
in the Construction Industry
815 Sixteenth Street, N. W.
Washington, D. C. 20006

Gentlemen:

I enclose a decision by Judge Charles H. Metzner of the United States District Court for the Southern District of New York, dated November 5, 1975, in a case styled Drywall Tapers and Painters of Greater New York, Local 1974, et al. v. Operative Plasterers and Cement Masons International Association of the United States and Canada, and Operative Plasterers Local 60, et al., 75 Civ. 4289.

You will note that an issue before the Court was the applicability of a Memorandum of Understanding dated November 29, 1961 between the Operative Plasterers and Cement Masons International Association of the United States and Canada, the Bricklayers, Masons and Plasterers International Union of America (now called International Union of Bricklayers and Allied Craftsmen) and the Brotherhood of Painters, Decorators and Paperhangers of America (now called the International Brotherhood of Painters and Allied Trades). A copy of that Memorandum is also enclosed.

In his opinion, Judge Metzner said: "It is clear that the issue of the present applicability of the 1961 Memorandum would be best decided by the Hearings Panel under the existing machinery of the Plan. Accordingly, the Court orders both Local 1974 through its International, and Plasterers to petition the Joint Administrative Committee for immediate referral to the Hearings Panel."

Pursuant to that order, the International Brotherhood of Painters and Allied Trades hereby requests that the Joint Administrative Committee

immediately refer to a Hearings Panel the issue of the present applicability of the 1961 Memorandum of Understanding. That is the sole issue to be referred, the sole issue to be decided and the sole issue as to which a decision will bind this International.

Thanking you for your anticipated attention to this matter, I remain

Very truly yours,

S. FRANK RAFTERY
General President

enclosures

bcc: General Vice President Wolford
General Representative DiSilvestro
Business Manager Alfarone
General Counsel Barr
Burton Hall, Esquire

Affidavit of James J. Boyle
dated January 21, 1976

Assigned to Judge Metzner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, and CHARLES LONG, et al., individually, etc., Plaintiffs	)	
v.	)	75 Civ. 4289 C M M
OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al., Defendants	)	

AFFIDAVIT OF JAMES J. BOYLE

DISTRICT OF COLUMBIA: ss

James J. Boyle, being duly sworn, deposes and says that:

1. Your deponent is a Vice President of the Operative Plasterers' and Cement Masons' International Association (hereinafter "OP&CMIA") and is the same James J. Boyle who executed affidavits dated September 15, 1975 and October 1, 1975, filed in the above-referenced case in support of Defendants OP&CMIA and Local 60's Motion to Dismiss the Complaint.

2. As previously noted in this deponent's October 1, 1975 affidavit, the OP&CMIA received a letter on September 19, 1975, from Mr. George Meany, President of the AFL-CIO, with an attached letter from the General President of the International Brotherhood of Painters and Allied Trades (hereinafter "Painters") in which Mr. Meany advised the OP&CMIA that the Painters had filed a charge against the OP&CMIA under Article XX of the AFL-CIO Constitution

alleging that the OP&CMIA had interfered with the established collective bargaining relationship between the Painters and the Metropolitan New York Drywall Contractors Association, Inc. and was, therefore, in violation of Article XX, Section 2.

3. Article XX, Section 2 of the AFL-CIO Constitution provides that:

> Each affiliate shall respect the established collective bargaining relationship of every other affiliate. No affiliate shall organize or attempt to represent employees as to whom an established collective bargaining relationship exists with any other affiliate.

4. Section 8 of Article XX sets out the initial procedure for the resolution of such charges by providing that they first be heard by a mediator selected from inside the labor movement. Section 9 provides that if a voluntary settlement cannot be reached at the mediation level a hearing shall then be conducted before an Impartial Umpire selected from a panel of Impartial Umpires "composed of prominent and respected persons". Generally the impartial umpires are prominent arbitrators such as David L. Cole and Howard W. Kleeb.

5. A mediation session on the Painters Article XX charge was held on October 14, 1975, at 10:00 a.m. in Mr. Meany's office at the AFL-CIO Building in Washington, D.C. Mediation was unsuccessful and a hearing was scheduled before Mr. David L. Cole, the Impartial Umpire, on November 14, 1975. This hearing was postponed until December 3, 1975, at 10:00 a.m. in the Americana Hotel, New York, New York.

6. Following the December 3, 1975, hearing, the Painters and the OP&CMIA submitted written briefs to Mr. Cole to aid in his

determination of the Painters' charge. On January 9, 1976, Mr. Cole issued a decision finding that the OP&CMIA had interfered with the collective bargaining relationship between the Painters and the Metropolitan New York Drywall Contractors Association, Inc. and had, therefore, violated Article XX, Section 2 of the AFL-CIO Constitution (copy of Mr. Cole's decision attached).

7. Under Article XX any party to the hearing before the Impartial Umpire has a right to appeal his decision to the President of the AFL-CIO who refers the appeal to a subcommittee of the Executive Council of the AFL-CIO. The subcommittee may disallow the appeal in which event the Impartial Umpire's decision is final, or the subcommittee may refer the appeal to the Executive Council, in which event the decision of the Impartial Umpire will be stayed pending disposition of the appeal by the Executive Council. Where an appeal is granted the decision of the Executive Council is final.

8. By letter dated January 13, 1976, the OP&CMIA filed a timely appeal of the Impartial Umpire's decision with the President of the AFL-CIO (copy of letter attached). This appeal will be processed in accordance with the procedure set forth above and the deponent expects that a hearing will be scheduled before a subcommittee of the Executive Council of the AFL-CIO within approximately one month.

9. The Impartial Jurisdictional Disputes Board has not yet been requested under the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry to consider the Painters' original appeal to the Board. The OP&CMIA has not in any way hindered the Impartial Board from hearing such appeal nor has the OP&CMIA refused to cooperate with the Painters in any individual or

joint efforts to obtain a hearing from the Impartial Board. The Painters have a right to individually request the Impartial Jurisdictional Disputes Board to consider their appeal from the New York Building Trades Employers' Association decision dated June 12, 1975.

James J. Boyle
JAMES J. BOYLE

Subscribed and sworn to before me
this 21st day of January, 1976.

Lucy J. VanKeuren
Notary Public, D.C.
My Commission Expires
November 30, 1979

Exhibit Attached to Affidavit of
James J. Boyle dated
January 21, 1976

OPERATIVE PLASTERERS' and CEMENT MASONS'
INTERNATIONAL ASSOCIATION of the UNITED STATES and CANADA

Office of General President
JOSEPH T. POWER
1125 Seventeenth Street, N.W., Washington, D.C. 20036
202 393-6569

JOSEPH T. POWER
General President
JOHN J. HAUCK
General Secretary-Treasurer
EDWARD J. LEONARD
General President Emeritus

GENERAL EXECUTIVE BOARD
JOSEPH T. POWER
Chairman
JOHN J. HAUCK
Secretary
MELVIN H. ROOTS
Executive Vice President
WARNER SEVANDER
Vice President
HARRY D. MARTINEZ
Vice President
PAT J. CHRISTIANO
Vice President
CHAS. W. IRVINE
Vice President

January 13, 1976

Mr. George Meany, President
AFL-CIO
815 - 16th Street, N. W.
Washington, D. C. 20006

Re: Case No. 75-86, Metropolitan New York Dry Wall Contractors Association, Inc.

Dear Sir and Brother:

Please be advised that the Operative Plasterers' and Cement Masons' International Association wishes to appeal the January 9, 1976, decision of Umpire David L. Cole in Case No. 75-86 for the reason that the decision is not compatible with the AFL-CIO Constitution, is not supported by the facts and is otherwise arbitrary and capricious.

Sincerely and fraternally,

J. Power

Joseph T. Power
General President

JTP:Bag

Exhibit Attached to Boyle
Affidavit dated January 21, 1976

all three issues should have been

Case No. 75-86
Dated: January 9, 1976
Hearing concluded: December 30, 1975

Before the Impartial Umpire under the AFL-CIO Internal Disputes Plan

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Between

International Brotherhood of Painters and Allied Trades

and

Operative Plasterers' and Cement Masons' International Association of the United States and Canada

Determination re:

Metropolitan New York Dry Wall Contractors Association, Inc.

Appearances:

For International Brotherhood of Painters and Allied Trades ("IBPAT")

James Shay, Director of Jurisdiction
Burton Hall, Esq., Counsel, Local Union 1974
John Alfarone, Business Manager, Local Union 1974

For Operative Plasterers' and Cement Masons' International Association of the United States and Canada ("OP&CMIA")

Glenn V. Whitaker, Esq., Counsel
James J. Boyle, Vice President
Michael Canuse, Vice President
Mario Provenzano, Vice President, Local 202
Frank Lo Presti, Business Agent, Local 60
Carmine Marotto, Business Agent, Local 202

- - - - - -

On September 15, 1975 the Brotherhood of Painters charged the Operative Plasterers' Association with violation of Section 2 of Article XX of the AFL-CIO Constitution for interfering with the Painters' established collective bargaining relationship with Metropolitan New York Dry Wall Contractors Association, Inc. and its affiliated members which the IBPAT acquired through the recognition by these employers of its Local 1974. OP&CMIA in response maintains that the only issue between Local 1974 and its Local Unions 60, 202 and 852 involves a jurisdictional dispute relating to drywall pointing and taping work, which type of dispute may not and should not be resolved by the AFL-CIO Internal

Disputes Impartial Umpire but should be referred instead to the Impartial Jurisdictional Disputes Board for determination and settlement. The Operative Plasterers' Association cites Section 6 of Article XX and some Impartial Umpire determinations in support of this position.

There is clearly a jurisdictional dispute between these affiliates, and unquestionably the issue as to which of these two affiliates is entitled to drywall pointing and taping work as a matter of general work or trade jurisdiction is not to be resolved by the Impartial Umpire, nor is any dispute as to violation of Article XX to be determined on the basis of general work or trade jurisdiction.

On the other hand, it has been established and declared repeatedly that the Umpire must make determinations based upon the principles set forth in Article XX. This means that if an affiliate has an established collective bargaining relationship as defined in Section 2 and some other affiliate organizes or attempts to represent employees as to whom this established collective bargaining relationship applies, or in other ways fails to respect this relationship, a charge of violation of Section 2 will be considered and ruled upon by the Umpire. The fact that matters in dispute between the two affiliates are susceptible of, or subject to, resolution through some other procedure does not deprive the Umpire of authority or obligation to proceed as stipulated in Article XX.

The parties are always at liberty to agree mutually to use some other procedure and bypass Article XX if they desire, or to arrive at a voluntary settlement and thereby obviate the need to employ the procedures of Article XX. But if they do not mutually agree to use some other procedure in lieu of Article XX, then the Article XX procedures must be followed.

This subject was discussed in Case No. 68-61 in a dispute between the International Association of Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Helpers and the Laborers' International Union of North America (Williams Tile and Terrazzo Co., Inc.). It was argued by LIU that there was at issue a work jurisdiction dispute subject to settlement pursuant to the Building and Construction Trades Department Constitution and excluded by Section 19 from the provisions of Article XX. The determination pointed out, however, that Article XX is not available for the settlement of work jurisdiction disputes, and consequently that Section 19 does not apply, citing Case No. 67-109 (50 LA 640). A decision was rendered on the charge that there was a violation of Article XX.

The Operative Plasterers has cited some determinations which seem to raise uncertainty as to the authority of the Umpire to rule in cases involving jurisdictional disputes. Nevertheless, it is clear that it is incumbent on the Umpire to rule on charges of violation of Section 2 or Section 3 of Article XX even if the parties happen to have other matters on which they differ, including differences over work jurisdiction. Um-

pire Kleeb has followed this rule in at least two cases. See Case No. 71-79 (De Wall Drywall) and Case No. 71-110 (Stanley & Wray).

We have ruled many times that the fact that some issue between the contending affiliates could and would be resolved if we permitted one of them to proceed as it desired in some other forum as, for example, before the NLRB, does not deny the complaining affiliate the right to have its charge of violation of Article XX processed and determined pursuant to Article XX. Indeed, although there was a clear legal right to proceed before the NLRB, as in representation, decertification, or Section 10(k) matters, if such a procedure resulted in a violation of the provisions of Section 2 or Section 3, our determinations have not hesitated to find such violations. Frequently, the recourse to the NLRB procedures has been held to be the basis of the finding of violation of Article XX.

The question for determination in the instant case is not whether the Operative Plasterers Association is entitled to the work in question, by virtue of the Decision of Record of May 19, 1947 set forth in the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry ("the Green Book"), or whether it belongs to the IBPAT by virtue of the Memorandum of Understanding entered into between these two international unions dated November 29, 1961. This jurisdictional question will have to be resolved elsewhere or in some other way. In fact, an array of other procedures, in court, before the NLRB, in arbitration under a collective bargaining agreement, and pursuant to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry have been undertaken or are under way.

Our question is whether the Brotherhood of Painters through its Local 1974 has an established collective bargaining relationship with employers affiliated with the Metropolitan New York Dry Wall Contractors Association, Inc. which the Operative Plasterers Association through its Local Unions 60, 202, and 852 has failed to respect in violation of Section 2 of Article XX.

Local 1974 has been recognized by the Metropolitan Association and its members for some years, having had a collective bargaining agreement for more than the requisite time to create an established collective bargaining relationship. In 1974 the Brotherhood of Painters had serious disagreements with the Contractors' Association leading to a strike in March, 1975. On December 1, 1974 the Metropolitan Dry Wall Contractors' Association entered into an agreement with the Operative Plasterers Association on behalf of its members covering drywall pointing and taping work previously performed under the collective bargaining agreement of the Brotherhood of Painters by employees represented by Local 1974 of the Brotherhood of Painters. A major difference between the two agreements is in the inconsistent provisions relating to the kind of work covered.

After this agreement was made with the Local Unions of the Opera-

tive Plasterers Association Local 1974 charges work has been sub-contracted by employers covered by the Painters' collective bargaining agreement on sites at which its members have been, or were scheduled to be, employed, and its members have been denied such work unless they would join one of the Plasterers' locals and work under the terms of the Plasterers' agreement. Testimony was offered in support of this charge by two employees who were instructed by their foreman to join a local of the Plasterers, and it was stated that their initiation fees were paid or offered to be paid by their employer. This was on projects in Brooklyn of Prince Carpentry, Inc. and the explanation offered was that the Plasterers' agreement has a union security clause.

These charges were not convincingly denied by the Plasterers. Their principal lines of defense are two. The first is that the drywall taping and pointing work is different under their agreement, since they use a form of plaster material with the trade name Sta-Smooth, rather than the kind of material used by the painters for such work.

It is reasonable to believe, however, that the work would nevertheless have been assigned to and performed by Painter employees but for the introduction of the recently negotiated Plasterers' agreement.

The second is that most members of the Metropolitan New York Dry Wall Contractors Association had in the late 1960's agreed to be bound by the National Agreement made in 1966 between OP&CMIA and another trade association, the Gypsum Drywall Contractors Association. This agreement described the work covered in practically the same way as it is now described in the December 1, 1974 local agreement between the Metropolitan Contractors Association and the three locals of the OP&CMIA.

The essence of this assertion by OP&CMIA is that it has also had an established collective bargaining relationship with the employers affiliated with the Metropolitan Association since sometime in the 1960's, and that it now has a valid collective bargaining agreement dated December 1, 1974.

The assertion that employers affiliated with the Metropolitan Contractors Association have had agreements since 1960 by assenting to be bound by the National Agreement of the Gypsum Drywall Contractors Association is not persuasive. No written assents were offered in evidence, and the only evidence offered was a statement prepared subsequent to our hearing, over the signature of Irving Mazzer, Executive Director of the Metropolitan Contractors Association, "per Arnold Koslow." This states: "To my knowledge, some of the members of the Metropolitan New York Dry Wall Contractors Association, Inc. have signed assents to be bound by the 1966 agreement between the Gypsum Drywall Contractors Association and OP&CMIA. To my best recollection, the agreement with my signature attached was signed sometime during the year 1968." We note that no agreement signed by the Executive Director was exhibited, nor any signed assents by members of the Association. Indeed, no names were offered of employers who assented, not even the employer named as the principal offender in the instant charges of Local 1974.

Beyond this, there was uncontradicted evidence that on September 23, 1974 the Executive Director or other officers of the Metropolitan Contractors Association represented to Painters' Local 1974 that none of its affiliated employers had made any agreement with any labor organization other than Local 1974 covering work arguably within the scope of their previous collective bargaining agreement. The agreement made shortly thereafter with the OP&CMIA on December 1, 1974 as the deadlocked negotiations between the Metropolitan New York Dry Wall Contractors Association and Local 1974 approached the strike stage did not destroy the Painters' established collective bargaining relationship, nor did it create such a relationship in favor of the locals of the Operative Plasterers. The acts complained of occurred well before a year expired after this December 1, 1974 agreement.

On the evidence before us the finding must be that the Brotherhood of Painters has an established collective bargaining relationship with employers affiliated with the Metropolitan New York Dry Wall Contractors Association, and that the course followed by the Operative Plasterers' locals was for the purpose of organizing or attempting to represent employees as to whom the established collective bargaining relationship of the Brotherhood of Painters exists.

DETERMINATION

The acts of the Operative Plasterers' and Cement Masons' International Association of the United States and Canada and its Local Unions 60, 202, and 852 with respect to employees of employers affiliated with the Metropolitan New York Dry Wall Contractors Association, Inc., complained of by the International Brotherhood of Painters and Allied Trades and its Local 1974, were in violation of the provisions of Section 2 of Article XX of the AFL-CIO Constitution.

Dated: January 9, 1976

David L. Cole

David L. Cole, Impartial Umpire

Motion of Defendant OP & CMIA and Defendant
Local 60 for Summary Judgement

Assigned to Judge Metzner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, and CHARLES LONG, et al., individually, etc., Plaintiffs	)	
v.	)	75 Civ. 4289 C M M
OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al., Defendants	)	

MOTION OF DEFENDANT OP&CMIA AND DEFENDANT LOCAL 60 FOR SUMMARY JUDGMENT

COME NOW the Defendant Operative Plasterers' and Cement Masons' International Association (hereinafter "OP&CMIA") and the Defendant Local 60 of the OP&CMIA, by and through counsel, and hereby request the Court to grant them summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, on the ground that the Court lacks subject matter jurisdiction over the Verified Complaint because the Plaintiffs have failed to exhaust their contractual remedies.

The Court is respectfully directed to the attached Memorandum of Points and Authorities in Support of Motion for Summary Judgment and in Opposition to Motion for Preliminary Injunction, the affidavits of James J. Boyle and attached exhibits filed here-

in, and the attached Statement of Material Facts Not in Dispute.

Respectfully submitted,

O'DONOGHUE & O'DONOGHUE
1912 Sunderland Place, N.W.
Washington, D.C. 20036

By _____
Donald J. Capuano

_____
Glenn V. Whitaker

LEVIN & WEISSMAN
122 East 42nd Street
New York, New York 10017

By _____
Roger M. Levin

Attorneys for Defendants
OP&CMIA and Local No. 60

Affidavit of James J. Boyle in
Support of Motion for
Summary Judgment

Assigned to Judge Metzner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, and CHARLES LONG, et al., individually, etc., Plaintiffs v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al., Defendants	)	75 Civ. 4289 C M M

AFFIDAVIT OF JAMES J. BOYLE

District of Columbia: SS

James J. Boyle, being duly sworn on oath, deposes and states that:

1. I am Vice President of the Operative Plasterers' and Cement Masons' International Association (hereinafter "OP&CMIA") and I have previously executed affidavits dated September 15, 1975, October 1, 1975, and January 21, 1976, which were filed in the above referenced case.

2. I have had an opportunity to review the affidavit of John Alfarone dated January 26, 1976 and the affidavit of James J. Shay dated January 23, 1976, filed in this matter on behalf of the Plaintiff Painters Local 1974 and I wish to comment on the statements contained therein.

3. The OP&CMIA did not at any time prior to service of the above-mentioned affidavits receive notice of the December 11, 1975, letter from S. Frank Raftery, General President of the International Brotherhood of Painters and Allied Trades (hereinafter "Painters International") to the Joint Administrative Committee,

Plan for the Settlement of Jurisdictional Disputes in the Construction Industry. In fact, the OP&CMIA had no reason to believe that the Plaintiff Local 1974 or the Painters International had any intention of filing such an appeal. At no time has either Local 1974 or the Painters International inquired with the OP&CMIA about an appeal to the Joint Administrative Committee. Moreover, neither Local 1974 nor the Painters International has requested the cooperation of the OP&CMIA with respect to such an appeal. In short, the OP&CMIA has been left completely in the dark by the Plaintiffs and the Painters International concerning any contemplated appeal to the Joint Administrative Committee.

4. As noted in this affiant's previous affidavit dated January 21, 1976, a hearing was conducted on December 3, 1975, at 10:00 a.m. in the Americana Hotel, New York, New York, with respect to the Article XX, Section 2 charge filed by the Painters International against the OP&CMIA. The charge alleged that the OP&CMIA had violated the AFL-CIO Constitution by attempting to organize and represent employees as to whom an established bargaining relationship existed with Painters Local 1974. Present at the hearing were the undersigned for the OP&CMIA and Messrs. Alfarone and Shay for the Painters International.

5. Throughout the hearing before the Impartial Umpire, David L. Cole, the OP&CMIA stressed the jurisdictional nature of the dispute between the OP&CMIA and Painters Local 1974. Pursuant to Article XX, Section 6 of the AFL-CIO Constitution, "Dispute settlements and determinations under [Article XX] shall not determine the general work or trade jurisdiction of any affiliate." Thus, the OP&CMIA argued that the Impartial Umpire was without authority to decide the dispute between the OP&CMIA and the Painters International and further, that said dispute should be referred to the Impartial Jurisdictional Disputes Board for resolution.

6. Mr. Shay responded to this argument by stating that the Impartial Jurisdictional Disputes Board had repeatedly refused to consider jurisdictional disputes which involved the pointing and taping of drywall, and that the Painters International was without any remedy before the Impartial Board. In support of this position, Mr. Shay introduced into evidence the December 11, 1973, letter from the Joint Administrative Committee to the General Presidents of the OP&CMIA, the Painters International and the Bricklayers, Masons and Plasterers International Union which letter states that the Joint Administrative Committee voted to notify the Impartial Jurisdictional Disputes Board that the Board shall defer action on any request for a job decision in cases involving the pointing and taping of drywall (Exhibit L attached to Affidavit of James J. Shay dated September 22, 1975).

7. In reply to the argument of the Painters International, the OP&CMIA pointed to the June 20, 1975, letter from the Impartial Jurisdictional Disputes Board to the General President of the Painters International accepting jurisdiction over the Painters' appeal from the June 12, 1975, decision of the Executive Committee of the Building Trades Employers' Association of New York ("BTEA"). In addition, the OP&CMIA noted the course of conduct engaged in by Painters Local 1974 which eventually led to the Impartial Board's withdrawal of its acceptance of the Painters' appeal on August 7, 1975 (see paragraphs 15, 16, 17 and 18 of the undersigned's affidavit dated September 15, 1975 and exhibits attached thereto).

8. At no time during the December 3, 1975, hearing before the Impartial Umpire did the Painters International ever reveal any intention to appeal the June 12, 1975, BTEA jurisdictional decision to the Impartial Jurisdictional Disputes Board. If the OP&CMIA had been aware of the December 11, 1975, letter to the

Joint Administrative Committee prior to the Impartial Umpire's decision on the Painters' Article XX charge, it would have brought such letter to the attention of the Impartial Umpire as rebuttal to the claim of the Painters that no remedy existed before the Impartial Jurisdictional Disputes Board.

9. Moreover, in my capacity as director of the Jurisdictional Department of the OP&CMIA, I have seen Mr. Shay on numerous occasions at jurisdictional meetings and other gatherings since this Court's decision dated November 5, 1975. Mr. Shay has never mentioned the present case to me during our meetings nor has he ever expressed to me any intention to appeal the BTEA decision pursuant to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.

10. It has been the OP&CMIA's consistent position throughout this litigation that the duty of going forward with an appeal of the jurisdictional dispute between the parties belongs to the Plaintiff Local 1974. The OP&CMIA has stood ready and willing to cooperate with the Painters International in the filing of any appeal of the jurisdictional dispute between the OP&CMIA and the Plaintiffs. Nevertheless, the OP&CMIA did not understand the Court's decision in the present case to require it to take the initiative in such an appeal. The OP&CMIA believes that the June 12, 1975, BTEA decision was a correct and proper determination of the jurisdictional dispute between the OP&CMIA and the Plaintiffs. To require the OP&CMIA to contact the Painters International and shepherd along its appeal pursuant to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry would be similar to requiring the winning party in a lawsuit to urge its opponent to file an appeal to the court of appeals.

11. In any event, the December 11, 1975 letter of the Painters International is sufficient to place the question present-

ed in said letter before the Joint Administrative Committee. The provisions of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry which relate to the convening of Hearings Panels do not contain any requirement that the OP&CMIA and the Painters International jointly appeal to the Joint Administrative Committee. The OP&CMIA has no reason to believe that the Joint Administrative Committee is refusing to consider the appeal of the Painters International or in any way refusing to comply with its obligations under the Plan.

12. A review of the December 11, 1975, letter of the Painters International discloses that it has not asked the Joint Administrative Committee to refer to a Hearings Panel the jurisdictional dispute which exists between the Painters and the OP&CMIA. Instead, the Painters International has asked the Joint Administrative Committee to refer to a Hearings Panel the narrow issue of the present applicability of the 1961 Memorandum of Understanding. Certainly, the present applicability of the 1961 Memorandum of Understanding is an issue which is a part of the jurisdictional dispute between the OP&CMIA and the Painters, but it is not the only issue between the parties. A jurisdictional dispute such as the one in the present case involves a great many issues. As was claimed by James J. Shay in paragraph 20 of his affidavit dated September 22, 1975, the Plaintiff Local 1974 submitted at least three issues to the BTEA for decision on the jurisdictional dispute between the OP&CMIA and Painters Local 1974: (1) the issue of the Contractor's change of assignment of the pointing and taping work on the Metro North project; (2) the issue of the materials being used on the Metro North project ("plaster" or "adhesive" as such terms are used in the May 19, 1947 "Green Book" Decision of Record); and (3) the issue of the Painters' rights under the 1961 Memorandum of Understanding. Contrary to Mr. Shay's earlier assertion that

all three issues should have been resolved by the BTEA in its June 12, 1975, decision, the Painters International now seeks to limit the jurisdictional dispute between the parties to a single issue, i.e., the present applicability of the 1961 Memorandum of Understanding. In effect, the Painters have asked the Joint Administrative Committee to ignore all parts of the jurisdictional dispute between the parties except that part which best suits the interests of the Plaintiffs.

13. As previously stated, the OP&CMIA has stood ready and willing to cooperate with the Painters International and/or the Plaintiffs and participate in any appeal of the jurisdictional dispute between the parties. However, the OP&CMIA is somewhat distressed about participating in an appeal which has been specially tailored by the Plaintiffs to exclude all but one of the issues in the jurisdictional dispute. The OP&CMIA can only conclude that the reason for the failure of the Plaintiffs and/or the Painters International to contact the OP&CMIA about a joint appeal to the Joint Administrative Committee is the nature of the appeal filed by Painters International.

14. Throughout Mr. Alfarone's affidavit dated January 26, 1976, he has repeatedly claimed that the Joint Administrative Committee has refused to follow its published Plan for the Settlement of Jurisdictional Disputes in the Construction Industry. Contrary to Mr. Alfarone's conclusory statements, there is absolutely no reason to believe that the Joint Administrative Committee is refusing to follow the procedures set forth in the Plan. In fact, if anyone is refusing to comply with their obligations under the Plan, it is the Plaintiffs. It should be remembered that the Painters International appealed the June 12, 1975, BTEA jurisdictional decision to the Impartial Jurisdictional Disputes Board on June 18, 1975, and that the Board accepted jurisdiction over the dispute on

June 20, 1975 (Exhibit 9 attached to Boyle Affidavit dated September 15, 1975). Thereafter, the Impartial Board was notified that the Plaintiff Local 1974 was pursuing arbitration against National Wall Systems, Inc. on the Metro North project which arbitration the Board felt may affect work jurisdiction (Exhibit 11 attached to Boyle Affidavit dated September 15, 1975). By proceeding with the arbitration, Plaintiff Local 1974 was violating Article VII, Section 5 of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry which prohibits a union from attempting to establish work jurisdiction on a unilateral basis through arbitration with an employer. In view of the pending arbitration proceeding, the Board notified the Painters International on July 10 that its hearing of the appeal was postponed indefinitely until the Painters International had decided to either pursue its appeal to the Impartial Jurisdictional Disputes Board or to continue with the arbitration proceeding (Exhibit 10 attached to Boyle Affidavit dated September 15, 1975). Thereafter, on July 18, 1975, the Impartial Jurisdictional Disputes Board again notified the Painters International that:

> "This notice of Intention to Arbitrate involves jurisdiction and is in violation of Article VII, Section 5 of the Plan and your Local Union should be so notified.
>
> Again, until this office is advised that the arbitration has been dropped, the hearing of your appeal is postponed indefinitely."
> (Exhibit 12 attached to Boyle Affidavit dated September 15, 1975)

Finally, on August 7, 1975, when the Impartial Jurisdictional Disputes Board still had not been notified that the arbitration was dropped, it withdrew its acceptance of the Painters International's appeal from the June 12, 1975, decision under the New York Plan (Exhibit 13 attached to Boyle Affidavit dated September 15, 1975).

15. Thus, by their own actions, i.e., pursuing the arbitration with National Wall Systems, Inc. in violation of Article VII, Section 5 of the Plan, the Plaintiffs prevented the Impartial Jurisdictional Disputes Board from proceeding to decide the Painters' appeal. Even if the Plaintiffs believed that the BTEA had decided the jurisdictional dispute improperly or ignored relevant evidence as alleged by the Plaintiffs, the appeal to the Impartial Board was the procedure which the Plaintiff Local 1974 was bound to utilize by virtue of its affiliation with the Building and Construction Trades Department and its participation in the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.

16. Having ignored the procedures set forth in the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry and having abandoned their appeal of the June 12, 1975, BTEA decision to the Impartial Jurisdictional Disputes Board, the Plaintiffs through the Painters International have petitioned the Joint Administrative Committee to refer to a specially appointed Hearings Panel the narrow issue of the present applicability of the 1961 Memorandum of Understanding. No mention was made by the Painters of the jurisdictional dispute between the OP&CMIA and the Plaintiffs which was considered by the BTEA on June 12, 1975, and the many issues which are involved therein. The OP&CMIA understands that the Painters' appeal to the Joint Administrative Committee was made pursuant to this Court's order, but the OP&CMIA believes that the Court intended a much broader appeal, one which included the entire jurisdictional dispute between the parties.

17. Since this Court's decision on November 5, 1975, the Arbitrator to whom the Plaintiff Local 1974 presented its breach of contract claim against National Wall Systems, Inc. on the Metro North project has rendered a decision. It should be recalled that

the Plaintiffs through Mr. Shay (paragraphs 25, 26 of Affidavit dated September 22, 1975) stated that the arbitration dispute had nothing whatever to do with jurisdiction, but merely charged the employer with violating certain provisions of the collective bargaining agreement concerning the subcontracting of the work to another employer. With respect to the claim made by Painters Local 1974 that the company was violating the subcontracting clause of its collective bargaining agreement with Local 1974, the Arbitrator found in his award that:

> "1. The action by the Employer in assigning the work in Building 'B' to the Plasterers' Union did not per se breach Article XVI of the Trade Agreement between the parties. It requires also that the assigned work being performed by the Plasterers indisputably belong to the Tapers' Union.
>
> 2. A valid determination or agreement that the work in question falls within the jurisdiction of the Tapers' Union will serve to establish that the above described assignment of work to the Plasterers did in fact constitute an improper sub-contracting of work in violation of Article XVI of the contract and would thereby entitle Local 1974 and its affected members to the following:
>
> A - Immediate assignment of taping employees referred to the Company by Local 1974, to perform drywall taping work in question;
>
> B - Damages consisting of wages and benefits lost as a consequence of such improper sub-contracting;
>
> C - In the event or a dispute as to the amount of recoverable damages the undersigned Arbitrator reserves jurisdiction to determine the specific measure of those damages." [Emphasis added]
>
> Exhibit "A" attached hereto.

The Arbitrator conceded that he did not have authority to decide the jurisdictional question.

18. Thus, contrary to Plaintiffs' protestations that their arbitration with National Wall Systems, Inc. had nothing to do with jurisdiction, it is clear from the Arbitrator's decision

that the arbitration case was intimately involved with work jurisdiction, and, in fact, the grievance submitted for arbitration by the Plaintiffs could not even be resolved prior to a jurisdictional determination.

19. In paragraph 10 of Mr. Alfarone's affidavit dated January 26, 1976, he has made extremely light of the Article XX decision rendered by the Impartial Umpire, David L. Cole (Exhibit C attached to Shay Affidavit dated January 23, 1976). Mr. Alfarone states that the Article XX decision was not jurisdictional and without a jurisdictional decision, the Plaintiffs will continue to suffer grievous and irreparable injury.

20. Mr. Alfarone's rather low opinion of the effect of the Impartial Umpire's Article XX decision comes as somewhat of a surprise to the undersigned in light of a letter bearing Mr. Alfarone's signature dated January 20, 1975 (Exhibit "B" attached hereto). Mr. Alfarone stated in his letter that:

> "The determination means (a) the OP&CMIA and/or its affiliated Local Unions cannot accept into their membership the employees of the employers affiliated with the Metropolitan New York Drywall Contractors Association, Inc., and (b) the OP&CMIA and/or its affiliated Local Unions cannot enter into any collective bargaining agreements with the Metropolitan New York Drywall Contractors Association, Inc. and/or its affiliated members which include work within the scope of the agreement of Drywall Tapers and Pointers Local Union 1974.
>
> Therefore, in order to be in compliance with the determination of Umpire Cole, the OP&CMIA and/or its affiliated Local Unions must (a) take immediate steps to disaffiliate from its membership the employees of the employers affiliated with the Metropolitan New York Drywall Contractors Association, and (b) take immediate steps to terminate the collective bargaining agreement dated December 1, 1974 between the OP&CMIA and/or its affiliated Local Unions and the Metropolitan New York Drywall Contractors Association, Inc. which includes work within the scope of the agreement of Drywall Tapers and Pointers Local Union 1974."

21. If, in fact, Mr. Alfarone is correct in his January 20, 1976, letter concerning the effect of the Impartial Umpire's Article XX decision, it is difficult for the undersigned to imagine more effective relief which the Plaintiffs could obtain from any other forum including this Court.

James J. Boyle
JAMES J. BOYLE

Subscribed and sworn to
before me this 6th day of
February, 1976.

Mary C. O'Bryon
Notary Public, D.C.

My Commission Expires September 30, 1977

Exhibit A
Annexed to Affidavit of
James J. Boyle

NEW YORK STATE MEDIATION BOARD

In the Matter of the Arbitration between

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL UNION 1974

-and-

NATIONAL WALL SYSTEMS, INC.

OPINION

AND

AWARD

A 75-999

Appearances:

For the Union:

Burton H. Hall, Esq.

For the Company:

Levin & Weissman, Esqs.
by Jeffrey L. Keisberg

Before:

Herbert L. Haber, Arbitrator

****

THE ISSUE

Drywall Tapers and Pointers of Greater New York, Local Union 1974 (hereinafter "Union") and National Wall Systems, Inc. (hereinafter "Employer" or "Company") submitted to the undersigned, as the Arbitrator duly designated pursuant to the procedures of the New York Mediation Board, for final and binding decision an issue in dispute between them which they state as follows:

> Has the Company violated Sections 1,3 and 5 of Article XVI of the Collective Bargaining Agreement and, if so, what shall the remedy be?

— Exhibit A —

BACKGROUND

Hearings on the issue were held on July 1, and August 4, 1975, at which all interested parties appeared and were afforded full opportunity to present evidence, examine and cross-examine witnesses, and make argument in support of their respective positions. Both parties filed post hearing briefs and the Union filed a reply memorandum, all of which was made a part of the record of these proceedings. 358a

The Employer is engaged in the construction business as a wallboard contractor. It regularly employs workers from various construction trades including tapers and is a party to a collective bargaining agreement with each of those groups.

Part of the work performed by the Employer is the sealing of cracks formed by the butting of sheet rock sections, and the covering of nailheads or screws. This process is known in the trade as the "finishing of joints". It is this work which is involved in the current matter.

In October 1974, the Company began work on a job site described as Metro North, a complex of three apartment buildings in New York City, pursuant to a sub-contract it received from the prime contractor. Work began in building "A" and was to procede to buildings "B" and "C" thereafter. The finishing of joints in building "A" was performed by employees of the Company who were members of the Tapers' Union.

In March or April of 1975, with the work in building "A" still not completed, the Company began work in building "B". However, the finishing of joints in this building was not assigned to its own employees who were "Tapers", but was instead being performed by "Plasterers", members of the Plasterers' Union and employees of the Vincent Colletti Company, a plastering contractor to whom National Wallboard Inc. had sub-contracted the work.

The Tapers' Union, claiming the work in building "B" as theirs, filed a jurisdictional grievance against the Plasterers' Union under the provisions of Article XXV of its contract with the Employer which calls for the adjustment of jurisdictional

disputes "in accordance with the principles of the New York Plan for the Settlement of Jurisdictional Disputes ...". The New York Plan provides for an attempt to mediate the dispute which, if the mediation attempt fails, will be followed by an arbitration. An appeal from the arbitration decision is permitted and is made to the Impartial Jurisdictional Disputes Board, a tri-partite board for the construction industry which is located in Washington, D.C.

Following an unsuccessful mediation effort in this grievance an arbitration was held and a decision rendered, which the Union appealed. At the same time, the Tapers also commenced a separate arbitration, under the grievance procedure provided in Article XIII of the contract between the parties, in which it alleged the violation of the above cited sections of that contract, and to which this decision relates. As a result of this separate action, the Impartial Jurisdictional Disputes Board, which had scheduled a hearing on the appeal under the New York Plan, has advised the Union that it deems the commencement of the separate proceeding under Article XIII as a violation of the New York Plan and that therefore the scheduled hearing on the appeal has been indefinitely postponed.

It is the position of the Employer, in the instant matter, that 1- this case involves a jurisdictional dispute which is required to be resolved in the manner agreed upon by the parties in their collective bargaining agreement - the so-called New York Plan - and that this Arbitrator should defer to that procedure, and that 2- the sub-contracting clauses of the contract allegedly violated by the Company have no application in this matter since the work in question is not covered by the contract.

It is the position of the Union that the violations of the sections of the contract cited in this proceeding are unrelated to the jurisdictional dispute being pursued in another forum in that the claimed violations occurred at a time when the work in question was admittedly within the jurisdiction

Local 1974, and that only after the improper assignment of work was made did the jurisdictional dispute arise. 360a

DISCUSSION

The parties have stipulated that the sole issue to be determined in the instant proceeding is whether the Employer has violated Sections 1,3 and 5 of Article XVI of their contract. Although considerable testimony, evidence and argument has been offered by each party in support of their opposing views as to which union should be performing the work now assigned to the Plasterers - the so-called jurisdictional question - neither party has contended that the determination of that question is one which should be made by this Arbitrator. The Employer has attempted to show by his emphasis on the differing nature of the work being performed by the Plasterers, that such work does not fall within the purview of the agreement between these parties and therefore such assignment could not violate its terms.

The Union, for its part, also devoted much time to the work being performed in buildings "B" and "C" in its efforts to establish that the work belongs to it. It also expended considerable effort to show that the quality of the work being performed there was lower than the construction standards prescribed by the job specifications, and that the sub-standard provisions of the Plasterer's contract - as compared to that of the Tapers'- and their much more pliant and less militant posture, establishes other motives on the part of the Employer in making the assignment to the Plasterers, than are alleged by him.

However, this material relates only tangentially to the Union's basic thrust that the Employer has violated the subcontracting clauses of the agreement. As counsel for the Union states in the final paragraph of his post hearing reply memorandum: " But as noted, the complexities of the dispute between the unions are irrelevant here: this case deals solely

with violations of the collective bargaining agreement committed at a time when the work in question was admittedly within Local 1974's jurisdiction." 361a

Sections 1, 3, and 5 of Article XVI of the collective bargaining agreement between the parties, provide as follows:

> "Section 1. Employers shall not sub-let or sub-contract to Journeyman or to any Employer not under contract with the Union any taping, pointing or other work done by members of the Union. Employers shall not other wise sublet such work except under conditions covered by this Trade Agreement.
>
> Section 3. Each Employer shall notify the Joint Board on the proper form upon receiving a contract award from any Builder, Owner Builder, General Contractor, or other contractor. Once an Employer has been awarded a contract, it shall be a violation of this Agreement to sub-contract or re-contract the same contract award to another employer.
>
> Section 5. The Association and the Union agree to the elimination of lumping (the subcontracting of labor without material). Every employer or subcontractor must furnish both labor and material complete under one contract."

The Union urges an extremely broad and comprehensive interpretation of this language. It argues that it was the intent of the parties to prevent absolutely, any sub-contracting or change in a job once it has been "registered" (Section 3 above). The Union cites as authority in support of this conclusion, an interpretation of Section 3 rendered by the attorney for the Employers' Association in which he states in part "... having received the award, the successful contrator must complete the work with his own work force" and that " the successful bidder may not recontract such work to another contractor".

In addition to this general prohibition in Section 3,

The Union argues that because there is no dispute that the work being performed was their work at the instant of the change in assignment, the language in Section 1 which forbids the sub-contracting of "...work done by members of the Union.", specifically prohibits the sub-contracting to "... any Employer not under contract with the Union...", and "... except under conditions covered by this Trade Agreement."

I do not find these arguments persuasive. My reading of the contract language suggests Article XVI was intended to perform a more limited purpose than that argued by the Union. Article XVI clearly establishes certain requirements to be followed in the handling of "work done by members of the Union", i.e., work which falls within its jurisdiction. Its various sections are designed to protect the Union, and its members, in their working conditions and assignments, but no where in the language of this article can I find a basis from which to extrapolate a prohibition against the Employer's actions outside the Union's jurisdiction.

Section 1 protects against the Employer's "subbing" to Journeymen or Employers not under contract with this Union or under conditions not covered by the contract.

Section 2 - which has not been previously referred to - provides that "Journeymen shall not directly or indirectly, whether through their wives or through any other subterfuge, contract to do any taping or any other work covered by this Trade Agreement."

Section 3 requires the Employer to complete a job with his own employees; no sub-contracting in mid-job.

Section 4 agrees that neither the Employer or the Union will take or work on a job on which a prior Employer has worked and not been paid.

Section 5 requires the same Employer to supply both labor and materials; no lumping.

Section 6 has the parties agreeing that quality workmanship will be expected and performed.

All of these sections talk to the work being performed. None talk about work outside the jurisdiction of the Tapers.

The interesting and ingenious argument that the work being performed at the point in time when the change in assignment occurs is controlling, must also fall to the ground for lack of support once it leaves the framework of the contract. Again, these sections cannot cover work performed, or to be performed, by another Union - unless that work belongs to the Taper's Union. Article XVI is violated by the assignment of Taper's work to another Union or under non-union or sub-union conditions. However, if a question of whether the work is Taper's work intervenes, that question must first be determined before one can turn to Article XVI. The question as to whom the work belongs is a jurisdictional question which must be answered in another forum and until it is answered - and in favor of the Taper's Union - no finding of a violation of Article XVI can lie.

Although the effect of my conclusion - that no violation of Article XVI has occurred per se by the actions described - is to throw the parties back to a determination of their jurisdictional dispute, I do not agree with the Employer's contention that it was inappropriate for the Union to bring the separate arbitration claiming the violation of Article XVI. I see the two proceedings as separate. A claimed violation of certain contract clauses is not necessarily subsumed by other violations. In the current instance a determination or an agreement that the work in question belongs to the Tapers will establish that the assignment of the work to the Plasterers was a violation of Article XVI, and damages for that violation would be indicated.

On the basis of the foregoing, the undersigned makes the following:

AWARD

1. The action by the Employer in assigning the work in Building "B" to the Plasterers'

Union did not per se breach Article XVI of the Trade Agreement between the parties. It requires also that the assigned work being performed by the Plasterers indisputably belong to the Tapers' Union.

2. A valid determination or agreement that the work in question falls within the jurisdiction of the Tapers' Union will serve to establish that the above described assignment of work to the Plasterers did in fact constitute an improper sub-contracting of work in violation of Article XVI of the contract and would thereby entitle Local 1974 and its affected members to the following:
   A- Immediate assignment of taping employees referred to the Company by Local 1974, to perform drywall taping work in question;
   B- damages consisting of wages and benefits lost as a consequence of such improper sub-contracting.
   C- In the event of a dispute as to the amount of recoverable damages the undersigned Arbitrator reserves jurisdiction to determine the specific measure of those damages.

Dated: November 28, 1975

HERBERT L. HABER, Arbitrator

State of New Jersey
County of Bergen } ss

On this 1 day of December, 1975, before me personally came and appeared HERBERT L. HABER, to me known and known to me to be the person who executed the foregoing instrument and he acknowledged to me that he executed the same.

JEANETTE SCHOCHET
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Jan. 27, 1979

Exhibit B Annexed to Affidavit
of James J. Boyle

LOCAL UNION 1974 DRYWALL TAPERS AND POINTERS
OF GREATER NEW YORK
INTERNATIONAL BROTHERHOOD OF
PAINTERS AND ALLIED TRADES
37 UNION SQUARE WEST, NEW YORK, N.Y. 10003 • (212) 243-8300

Office of JOHN ALFARONE, Bus. Mgr.

366a

JOHN ALFARONE, Pres.
DOMINICK DeCRESCENZO, Vice Pres.
AL ZAPPY, Rec. Sec'y.
JOSEPH GIORDANO, Bus. Rep., Fin. Sec'y
DANIEL JONES, Treas.
FRANK ALFARONE, Bus. Rep.

January 20, 1976

TO ALL MEMBERS

I am pleased to inform you that The AFL-CIO Impartial Umpire David L. Cole ruled that the acts of the Operative Plasterers and Cement Masons International Association and its Local Unions 60, 202, and 852, complained of by the International Brotherhood of Painters and Allied Trades, were in violation of the provisions of Article XX, Section 2 of the AFL-CIO Constitution.

The determination means (a) the OP&CMIA and/or its affiliated Local Unions cannot accept into their membership the employees of the employers affiliated with the Metropolitan New York Drywall Contractors Association, Inc., and (b) the OP&CMIA and/or its affiliated Local Unions cannot enter into any collective bargaining agreements with the Metropolitan New York Drywall Contractors Association, Inc. and/or its affiliated members which include work within the scope of the agreement of Drywall Tapers and Pointers Local Union 1974.

Therefore, in order to be in compliance with the determination of Umpire Cole, the OP&CMIA and/or its affiliated Local Unions must (a) take immediate steps to disaffiliate from its membership the employees of the employers affiliated with the Metropolitan New York Drywall Contractors Association, and (b) take immediate steps to terminate the collective bargaining agreement dated December 1, 1974 between the OP&CMIA and/or its affiliated Local Unions and the Metropolitan New York Drywall Contractors Association, Inc. which includes work within the scope of the agreement of Drywall Tapers And Pointers Local Union 1974.

Fraternally yours,

John Alfarone

John Alfarone
Business Manager

— Exhibit B —

RECEIVED

Affidavit of John Alfarone in
Opposition to Motion for
Summary Injuction

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974

-and-

CHARLES LONG, et al., individually, etc.,

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al.,

Defendants.

75 Civ. 4289 (C.M.M.)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JOHN ALFARONE, being duly sworn, deposes and says:

1. That he is President and Business Manager of plaintiff Drywall Tapers Local 1974, is fully familiar with the facts and proceedings herein, and makes this affidavit in opposition to defendants' cross-motion for summary judgment herein.

2. The facts material to this dispute have been set forth in detail in the Verified Complaint and in the affidavits previously submitted to the Court. It would appear unnecessary to burden the Court with their repetition here. Accordingly, reference is here made to the prior papers, including plaintiffs' reply memorandum recently submitted in support of plaintiffs' motion (renewed) for preliminary injunction.

3. In his most recent affidavit Mr. Boyle conclusorily denies that the Joint Administrative Committee refuses to follow its published Plan. But even he would appear to concede that there is no need for further delay in anticipation of any response by the Committee to the Painters' petition. He concedes that the

Painters' letter of December 11, 1975 "is sufficient to place the question ... before the Joint Administrative Committee"; accordingly, the Committee's failure to respond to it cannonly mean its refusal to refer the issue to the Hearings Panel. It would be obviously pointless to wait another month or two in the hope that the Committee might respond favorably to Painters' request.

4. Neither Mr. Boyle nor any other representative of Plasterers offers any explanation for the failure of Plasaterers to comply with this Court's Order of November 5, 1975. In the absence of at least an explanation, it would appear presumptuous, if not contumacious, for Plasterers to come before this Court asking further delay -- or asking for summary judgment for alleged "non-exhaustion" by plaintiffs.

5. In fact, as the previous papers make clear, plaintiffs have painstakingly and patiently exhausted all remedies available to them short of suit in Court and renewal of their motion for preliminary injunction. There is simply no further remedy available to them within the AFL-CIO or Building Trades Department structure for enforcement of, and viddication of their rights under, the Memorandum of Understanding of November 29, 1961.

6. Plaintiffs continue to suffer grievous and material injury irreparable at law and will continue to suffer such injury unless this Court otherwise orders. Defendants continue to "raid" plaintiffs' work and send their members to perform plaintiffs' work; they continue to interfere with the efforts of plaintiff Local 1974 to defend the rights and interests of its members.

WHEREFORE, your deponent prays that defendants' cross-motion be denied, that plaintiffs' renewed motion for preliminary injunction be granted and that partial summary judgment be granted for plaintiffs on all non-money-damage issues.

Sworn to before me this
16th day of February, 1976

John Alfarone
JOHN ALFARONE

Opinion of Metzner U. S. D. J.
Granting Motion for Preliminary Injuction
dated March 5, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG, et al., etc.,

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, etc., et al.,

Defendants.

75 Civ. 4289 (CMM)

- x

METZNER, D. J.:

This is a renewal of a motion by plaintiff Drywall Tapers and Pointers of Greater New York, Local 1974, for a preliminary injunction. At the time of the original motion, defendants, referred to herein collectively as Plasterers, had cross-moved to dismiss the complaint. At that time the court denied both motions without prejudice to renewal "on a showing that the Plasterers are not cooperating or that the Building and Construction Trades Department [of the AFL-CIO] refuses

to follow its own published plan." This determination followed a directive that both plaintiff and defendant petition the Joint Administrative Committee of the Building and Construction Trades Department for immediate referral of the issue to the Hearings Panel of that Department, its national-level arbitration board.

Upon renewal of plaintiff's motion for a preliminary injunction, defendants cross-moved for summary judgment on the ground of failure to exhaust contractual remedies, and plaintiff has answered this motion with its own motion for partial summary judgment.

We are dealing with a jurisdictional dispute, the details of which were fully developed in the prior opinion of this court, Drywall Tapers and Pointers of Greater New York, Local 1974 v. Operative Plasterers' and Cement Masons' International Association, 75 Civ. 4289 (S.D.N.Y. November 5, 1975). The issue presented to this court revolves around the present applicability of a 1961 Memorandum of Understanding entered into by the international unions in question. This court determined that the issue could best be resolved through application to the Joint Administrative Committee for referral to the

Hearings Panel, in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.

Pursuant to the directive of this court, the plaintiff's international union made application for the necessary administrative resolution. Siginficantly, the defendant union did not join in the application, and to date has failed to take any step to resolve the matter administratively.

Plaintiff's application to the Joint Administrative Committee for the necessary action was made on December 11, 1975. To date, no action has been taken by the Committee. Consequently, plaintiff renews the original motion.

The court is at a loss to understand the dragging of heels in this inter-union dispute between members of the Building and Construction Trades Department. It is also at a loss to understand the failure of defendants to join in trying to resolve this matter within the union framework, especially in view of the court's direct mandate.

The viability of the 1961 agreement has been upheld many times by the Disputes Board of the Building and Construction Trades Department. Finally, the Joint Administrative Committee on December 11, 1973 found the question repetitive and referred it to the international presidents of the two unions. However, the Committee also directed the Disputes Board to defer action on all such jurisdictional disputes. The international presidents have failed to resolve the dispute, yet the Joint Administrative Committee has not referred the matter to the Hearings Panel for a national decision--thus the stalemate with which we are confronted. As the dispute as to this point is already at its highest administrative level, there is a clear exhaustion of remedy.

It should be noted that the defendants contend that exhaustion of contractual remedies has not been completed due to factors surrounding a decision of a lower arbitral board, the "BTEA," as described in the prior opinion of the court. That determination dealt only with a decision as to the nature of a finishing material, and even if appealed, whether affirmed or reversed, would in no way affect the question properly

before this court, the applicability of the 1961 Memorandum.

It appears that it is likely that the 1961 Memorandum of Understanding is viable in view of the repeated decisions of the Department's own Disputes Board. I see no reason to interfere with these determinations.

Consequently, the preliminary injunction shall issue based both on this opinion and the opinion of this court dated November 5, 1975.

While the court has determined that it is likely that plaintiff will prevail on the merits, defendants have raised questions of fact going to the viability of the 1961 Memorandum. At this early stage of the proceedings, pre-discovery, and with a substantial factual matter in issue, summary judgment for either side is clearly inappropriate.

Accordingly, the motion for a preliminary injunction is granted. The motions for summary judgment are denied. Defendants shall answer the complaint within twenty days of the date of this opinion.

Settle order on notice.

Dated: New York, N. Y.
March 5, 1976

Charles M. Metzner
U. S. D. J.

Order of Metzner, U. S. D. J.
Granting Motion for Preliminary Injuction
Dated March 12, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974,

-and-

CHARLES LONG, PASQUALE DE ROSA, ALBERT ZAPPY, HARRY EDWARDS and ANTHONY DEL GAIS, each of them individually, etc.,

Plaintiffs,

-against-

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, OPERATIVE PLASTERERS LOCAL 60, OPERATIVE PLASTERERS LOCAL 202, and OPERATIVE PLASTERERS LOCAL 852,

Defendants.

75 Civ. 4249 (C.M.M.)

ORDER

This case was brought on by plaintiffs' renewed motion for a preliminary injunction, and the Court having considered the affidavits and memoranda submitted in support of and in opposition to such renewed motion, and also the affidavits, memoranda and pleadings previously submitted to the Court by the plaintiffs and by the defendants, and the Court having filed a Memorandum dated March 5, 1976, setting forth its findings of fact and conclusions of law and granting, on the basis of such findings and conclusions, plaintiffs' motion for a preliminary injunction, it is, pending final determination of this action and subject to plaintiffs' furnishing security in the amount of $25,000. for the purpose [illegible] it is found that [illegible]

ORDERED, that defendants, and each of them, immediately comply with a certain Memorandum of Understanding, entered into by defendant Operative Plasterers' and Cement Masons' International Association of the United States and Canada with certain other labor organizations under date of November 29, 1961, by immediately removing and/or causing to be removed from performance of any work involving taping or pointing of drywall surfaces (except for any such surfaces that are to receive plaster finish, acous-

-1-

26

tical finish or imitation acoustical finish), at any jobsite or jobsites, wheresoever located, at which such work is being performed or is to be performed, any and all persons presently performing such work or employed to perform work who are members of any of the defendants or of any subordinate body of any of the defendants or who were sent to such jobsite to perform such work by or at the direction, suggestion or invitation of any officer or representative of any of the defendants or of any subordinate body of any of the defendants; and it is further

ORDERED, that defendants and each of them, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any of them, be and they hereby are enjoined from causing, encouraging, advising, counseling or permitting any persons, members of any of the defendants or of any subordinate body of any of the defendants, to perform, or to accept employment to perform, any work involving taping or pointing of drywall surfaces (except for any such surfaces that are to receive plaster finish, acoustical finish or imitation acoustical finish), and from in any other or different way violating or failing to comply with the provisions of a certain Memorandum of Understanding, entered into by defendant Operative Plasterers' and Cement Masons' International Association of the United States and Canada with certain other labor organizations under date of November 29, 1961, insofar as the same relates to or describes work involving taping and/or pointing of drywall surfaces; and it is further

ORDERED, that defendants, each of them, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any of them, be and they hereby are enjoined and restrained from asserting either jurisdiction or bargaining rights over any work, at any jobsite wheresoever located, involving either taping or pointing of any

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drywall surfaces, except for such surfaces that are to receive plaster finish, acoustical finish or imitation acoustical finish.

The order is stayed to March 17, 1976 pending application to the Court of Appeals for a further stay.

Dated: March 11, 1976

Buffalo, N.Y.

Charles M. McCarthy

UNITED STATES DISTRICT JUDGE

Service of three ③ copies of the within
is admitted this 12th day of April 1976

Burton Hall

Attorney for Appellee